

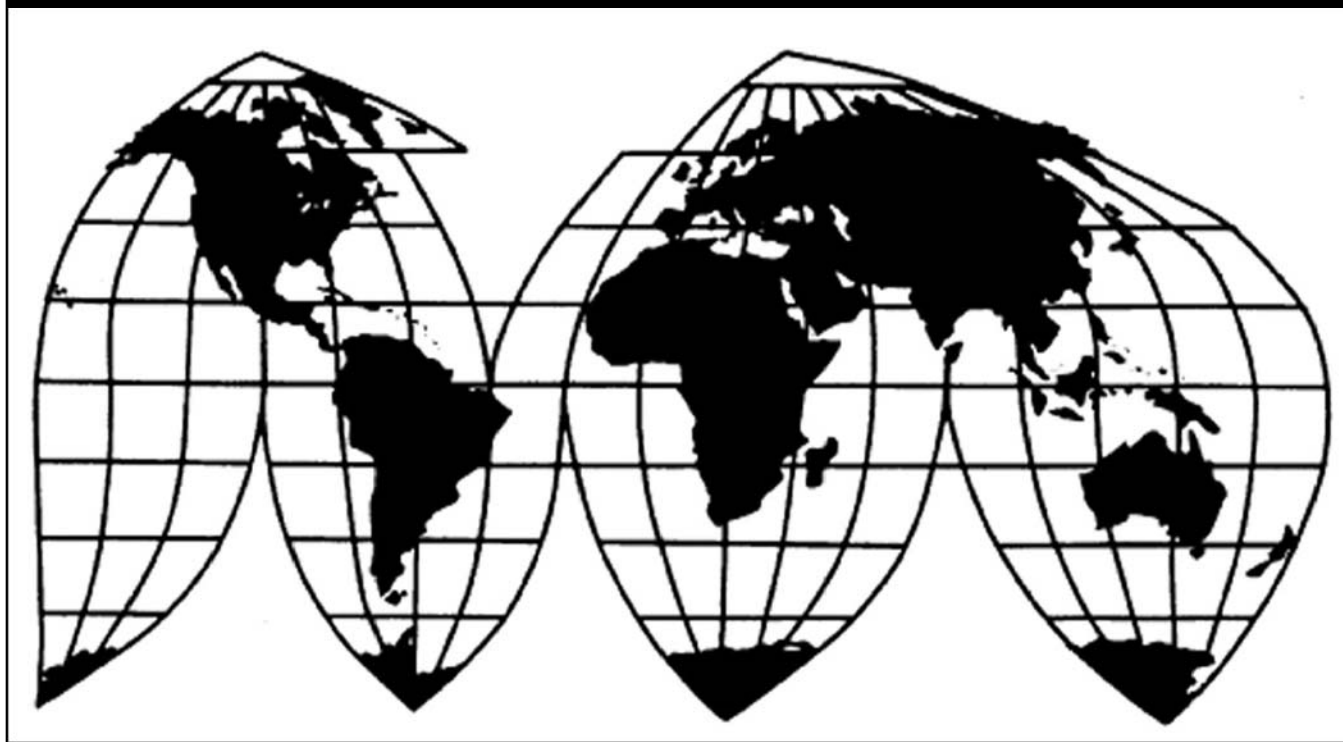
Certain Tow-Behind Lawn Groomers and Parts Thereof from China

Investigation Nos. 701-TA-457 and 731-TA-1153 (Final)

Publication 4090

July 2009

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-457 and 731-TA-1153 (Final)

CERTAIN TOW-BEHIND LAWN GROOMERS AND PARTS THEREOF FROM CHINA

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, 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 an industry in the United States is materially injured by reason of imports from China of certain tow-behind lawn groomers and parts thereof, provided for in subheadings 8432.40.00, 8432.80.00, 8432.90.00, 8479.89.98, 8479.90.94, and 9603.50.00 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).²

BACKGROUND

The Commission instituted these investigations effective June 24, 2008, following receipt of a petition filed with the Commission and Commerce by Agri-Fab, Inc., Sullivan, IL. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain tow-behind lawn groomers and parts thereof from China were being subsidized by the government of China and being sold at LTFV within the meaning of sections 703(b) and 733(b) of the Act (19 U.S.C. §§ 1671b(b) and 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 March 13, 2009 (74 FR 10964). The hearing was held in Washington, DC, on June 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 Vice Chairman Pearson finds that the domestic industry is threatened with material injury by reason of subject imports.

VIEWS OF THE COMMISSION

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 tow-behind lawn groomers and parts thereof (“TBLGs”) 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 TBLGs from China that Commerce has found to be subsidized by the Government of China.¹

I. BACKGROUND

The petitions were filed on June 24, 2008 by Agri-Fab, Inc. (“Agri-Fab”), the leading domestic producer of TBLGs, which participated fully in the final phase of these investigations.² Only one respondent, Jiashan Superpower Tools Co., Ltd. (“Superpower”), a Chinese producer of subject merchandise, participated as a party in the final phase of these investigations. Superpower filed a prehearing brief but did not participate in the hearing or file a posthearing brief or final comments.

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 characteristics and uses” on a case-by-case basis.⁶ No single factor is dispositive, and the Commission

¹ Vice Chairman Pearson determines that an industry in the United States is not materially injured but threatened with material injury by reason of imports of TBLGs from China that Commerce has found to be sold in the United States at less than fair value and subsidized by the Government of China. See Additional and Dissenting Views of Vice Chairman Daniel R. Pearson. He joins the majority opinion except as noted in those views.

² Confidential Staff Report (“CR”) at I-1; Public Staff Report, (“PR”) at I-1; CR/PR at Table III-1 (***)

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

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 (continued...)

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 these investigations as follows:

The scope of this investigation covers certain non-motorized tow behind lawn groomers ("lawn groomers"), manufactured from any material, and certain parts thereof. Lawn groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of this investigation, even if the lawn groomer is designed to perform additional non-subject functions (e.g., mowing).

All lawn groomers are designed to incorporate a hitch, of any configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of this investigation. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the investigation.

Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to

⁶ (...continued)

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).

rotate. The aerating component is made up of a set of knives fixed to a plate (known as a “plug aerator”), a series of discs with protruding spikes (a “spike aerator”), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface.

Dethatchers consist of a frame, as well as a series of tines designed to remove material (e.g., dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (i.e., a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (“broadcast spreader”), a rotating agitator that allows the media to be released at a consistent rate (“drop spreader”), or any other configuration.

Lawn dethatchers with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the investigation. Other lawn groomers- sweepers, aerators, and spreaders-with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the investigation.

Also included in the scope of the investigation are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units-when imported with one or more lawn grooming modules-with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the investigation. Modular unit chasses, imported without a lawn grooming module and with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the order. When imported separately, modules that are designed to perform subject lawn grooming functions (i.e., sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

Lawn groomers, assembled or unassembled, are covered by this investigation. For purposes of this investigation, “unassembled lawn groomers” consist of either 1) all parts necessary to make a fully assembled lawn groomer, or 2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following “major components”-:

- 1) an assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;
- 2) a sweeper brush;
- 3) an aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;
- 4) a spreader hopper;
- 5) a rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;
- 6) dethatcher tines;
- 7) aerator spikes, plugs, or other aerating component; or
- 8) a hitch.

The major components or parts of lawn groomers that are individually covered by this

investigation under the term “certain parts thereof” are: (1) brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

The products for which relief is sought specifically exclude the following: 1) agricultural implements designed to work (e.g., churn, burrow, till, etc.) soil, such as cultivators, harrows, and plows; 2) lawn or farm carts and wagons that do not groom lawns; 3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; 4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; 5) “push” lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; 6) dethatchers with a net assembled weight (i.e., without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers-sweepers, aerators, and spreaders-with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of more than 200 pounds; and 7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (e.g., “drum-style” spike aerators).

The lawn groomers that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.90.0030, 8432.90.0080, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in this petition.¹¹

TBLGs consist of four types of equipment – aerators, dethatchers, spreaders, and sweepers – designed to be towed behind a lawn tractor, riding lawn mower, or similar vehicle and used for the promotion of healthy, attractive lawns.¹² Tow-behind aerators punch small holes in the soil to facilitate the penetration of oxygen, water, and fertilizer, which nourish grass.¹³ Tow-behind dethatchers use a series of spring steel tines to rake and dislodge debris compacted on the surface of the soil, further promoting the penetration of oxygen, water, and fertilizer.¹⁴ Tow-behind spreaders distribute granular material such as grass seed or fertilizer using a hopper or bin to hold the material and a mechanism for either dropping (in the case of a drop spreader) or flinging (in the case of a broadcast spreader) the material across a lawn.¹⁵ Tow-behind sweepers use rotating brushes to sweep debris, such as grass clippings, leaves, and twigs, off the surface of a lawn and into a catcher bag for disposal, in order to improve the lawn’s appearance.¹⁶

¹¹ CR at I-5-7; PR at I-5-7.

¹² CR at I-12; PR at I-11.

¹³ CR at I-14; PR at I-12.

¹⁴ CR at I-15; PR at I-12-13.

¹⁵ CR at I-16; PR at I-13.

¹⁶ CR at I-18; PR at I-15.

C. Like Product Analysis

In the preliminary phase of these investigations, the Commission defined a single domestic like product comprised of all TBLGs that is coextensive with the scope of the investigations defined by Commerce, as advocated by Agri-Fab. It based its conclusion on evidence that the four types of TBLGs possess both similarities and differences with respect to their physical characteristics and uses, interchangeability, and customer and producer perceptions, but are predominantly similar with respect to the Commission's three other like product factors.¹⁷ Noting that the question of how to define the domestic like product was a close one, the Commission indicated that it would explore the issue further in any final phase investigations, particularly with respect to customer and producer perceptions.¹⁸

The Commission also determined not to expand the definition of the domestic like product to encompass products outside the scope of the investigations, including motorized groomers, agricultural implements, ground-engaging attachments, carts, push groomers, sprayers, and rollers.¹⁹ It based this decision on evidence that the differences between products outside the scope and products inside the scope were such that a reasonable dividing line could be drawn between TBLGs and products outside the scope.²⁰

In the final phase of these investigations, Agri-Fab again argues that the Commission should define a single domestic like product encompassing all TBLGs that is coextensive with the scope of the investigations defined by Commerce.²¹ Superpower argues that the Commission should define three domestic like products: dethatchers/sweepers, aerators, and spreaders.²² The spreader like product would include push spreaders and tow sprayers that are outside the scope of the investigations.²³

For the reasons discussed below, we define one domestic like product that is coextensive with the scope of the investigations.

1. Analysis

Physical characteristics and uses

All TBLGs, including tow-behind aerators, dethatchers, spreaders, and sweepers, share certain physical characteristics. All incorporate a towing hitch so that they can be towed behind a lawn tractor,

¹⁷ Certain Tow-Behind Lawn Groomers and Parts Thereof from China, Inv. Nos. 701-TA-457 and 731-TA-1153 (Preliminary), USITC Pub. 4028 (Aug. 2008) ("USITC Pub. 4028"), at 10; see also Confidential Views of the Commission, Tow-Behind Lawn Groomers from China, Inv. Nos. 701-TA-457 and 731-TA-1153 (Preliminary) ("Confidential Preliminary Views"), at 13-14.

¹⁸ USITC Pub. 4028 at 10; Confidential Preliminary Views at 14.

¹⁹ See USITC Pub. 4028 at 12-15; Confidential Preliminary Views at 14-20.

²⁰ USITC Pub. 4028 at 14; Confidential Preliminary Views at 20.

²¹ See Agri-Fab's Prehearing Br. at 2-11; Agri-Fab's Posthearing Br. at 2-10.

²² See Superpower's Prehearing Br. at 2-19. Unlike its argument in the preliminary phase investigations, Superpower does not argue that the Commission should include products from outside the scope within the domestic like product if it defines a single domestic like product. See id.

²³ See Superpower's Prehearing Br. at 5, 17-19.

riding lawn mower, or similar vehicle.²⁴ All are made primarily of steel²⁵ and are designed to ***.²⁶ All are a similar size and shape and incorporate a steel frame, engage/disengage transport handle, two wheels, and a single axle (in most cases).²⁷ ***²⁸

The physical differences between specific types of TBLGs correspond to their distinct uses. Only aerators have rows of spurs or funnel type knives rotating on an axle to punch holes in the soil.²⁹ Only dethatchers have rows of spring steel tines to dislodge debris packed onto the surface of a lawn.³⁰ Only spreaders include a hopper and a mechanism for spreading solid material, such as fertilizer, on the surface of a lawn.³¹ Only sweepers include brushes and a catcher bag for sweeping and collecting debris off the surface of a lawn for disposal.³² The four types of TBLGs also differ in terms of their frequency of use, with aerators used twice a year, dethatchers used once a year, and sweepers used frequently.³³ Accordingly, most producers, importers, and purchasers reported that the four types of TBLGs are somewhat or not at all similar in terms of their physical characteristics and uses.³⁴

Interchangeability

Producers, importers, and purchasers reported that tow-behind aerators, dethatchers, spreaders, and sweepers are generally not interchangeable with respect to their specific functions.³⁵ The record, however, demonstrates significant production and U.S. sales of combination TBLGs that are interchangeable with individual TBLGs that perform the same lawn grooming functions.³⁶ Specifically, combination spreader/aerators are interchangeable with spreaders and aerators and combination

²⁴ CR at I-12; PR at I-11.

²⁵ CR at I-22-23; PR at I-19. Many spreaders also possess a significant plastic component in the form of a hopper. See Agri-Fab Responses to Commissioner Questions at A-34.

²⁶ CR at I-13; PR at I-11; see also Agri-Fab Responses to Commissioner Questions at A-32.

²⁷ CR at I-13; PR at I-11.

²⁸ Staff Notes, Field Visit to Agri-Fab Inc., Tow-Behind Lawn Groomers from China, Inv. Nos. 701-TA-457 and 731-TA-1153 (Final), April 14, 2009 (“April 14, 2009 Field Visit Notes”), at 2.

²⁹ CR at I-14; PR at I-12.

³⁰ CR at I-15; PR at I-12-13.

³¹ CR at I-16; PR at I-13.

³² CR at I-18; PR at I-15.

³³ See CR at I-14-15, 18; PR at I-12-13, 15. Superpower claims that spreaders are used several times during the growing season and also to spread ice melt in the winter months. Superpower Prehearing Br. at 7.

³⁴ CR at I-21; PR at I-18; CR/PR at Table I-4. Out of 133 comparisons of one type of TBLG with another, questionnaire respondents reported that the physical characteristics and uses of the different TBLGs were fully similar with respect to zero comparisons, mostly similar with respect to three comparisons (of dethatchers to aerators), somewhat similar with respect to 31 comparisons and not at all similar with respect to 99 comparisons. See id. at Table I-4.

³⁵ CR at I-25-26; PR at I-21; CR/PR at Table I-6. Out of 142 comparisons of one type of TBLG with another, questionnaire respondents reported that in terms of interchangeability, the different types of TBLGs were fully similar with respect to zero comparisons, mostly similar with respect to one comparison, somewhat similar with respect to six comparisons and not at all similar with respect to 136 comparisons. See id. at Table I-6.

³⁶ CR at I-26; PR at I-21; see also Hearing Tr. at 30 (Smirnow).

sweeper/dethatchers are interchangeable with sweepers and dethatchers.³⁷ Such combination TBLGs accounted for *** percent of the value of Agri-Fab's TBLG sales in 2007.³⁸ In addition, Agri-Fab's new "SmartLink" modular TBLG, which uses a "master platform" into which consumers can plug aerator and dethatcher modules, is interchangeable with the individual TBLGs performing the same functions as the lawn grooming modules.³⁹ Agri-Fab reports that it sold *** SmartLink units between February and May of 2009.⁴⁰

Common manufacturing facilities, production processes, and production employees

Producers, importers, and purchasers generally reported that the manufacturing facilities, production processes, and production employees used to produce the four types of TBLGs are mostly or somewhat similar.⁴¹ Agri-Fab produces all four types of TBLGs in the same facility, on the same assembly lines, using the same equipment and the same employees, ***.⁴² Domestic producer Brinly-Hardy ***.⁴³ Since Agri-Fab and Brinly-Hardy together accounted for *** percent of domestic TBLG production over the period examined, their experience indicates that domestic TBLGs are generally produced using common manufacturing facilities, processes, and employees.⁴⁴

³⁷ Hearing Tr. at 30 (Smirnow). Brinly-Hardy also produces combination dethatcher-sweepers and aerator-spreaders. See Petition at Exhibit I-9 (Brinly-Hardy product catalog).

³⁸ Agri-Fab Responses to Commission Staff Questions at 2.

³⁹ CR at I-20, 26; PR at I-16-17, 21.

⁴⁰ Agri-Fab Responses to Commissioner Questions at A-33 (***).

⁴¹ CR at I-24; PR at I-20; CR/PR at Table I-5. Out of 68 comparisons of one type of TBLG with another, questionnaire respondents reported that the manufacturing facilities, production processes, and production employees used to produce the products were fully similar with respect to one comparison, mostly similar with respect to 24 comparisons, somewhat similar with respect to 40 comparisons, and not at all similar with respect to three comparisons. See id. at Table I-5. Most responding purchasers reported no familiarity with the TBLG manufacturing process. CR at I-24; PR at I-20; CR/PR at Table I-5.

⁴² CR at I-22; PR at I-19; April 14, 2009 Field Visit Notes, at 2 (noting that ***). Agri-Fab reports that its employees are cross-trained to produce all types of TBLGs. Hearing Tr. at 25 (Smirnow). It also uses the same tooling, machinery, and tube bending equipment to make parts for all types of TBLGs and the same powder coating equipment to paint all types of TBLGs. CR at I-23-24; PR at I-19-20; Agri-Fab Prehearing Br. at 4; Hearing Tr. at 24-25 (Smirnow). Indeed, ***. April 14, 2009 Field Visit Notes, at 2.

⁴³ Domestic Producers' Questionnaire Response of Brinly-Hardy at Questions I-2 (***), V-3a-3d (***), V-4 (***).

⁴⁴ See CR/PR at Table III-1. Ohio Steel Industries, which produced ***, accounted for *** percent of domestic TBLG production during the period examined. See Domestic Producers' Questionnaire Response of Ohio Steel Industries at Questions V-3a-3d; CR/PR at Table III-1. Spyker, which produces ***, accounted for *** percent of domestic TBLG production during the period examined. See Domestic Producers' Questionnaire Response of Spyker at Questions V-3a-3d; CR/PR at Table III-1. Precision Products produced *** and accounted for *** percent of domestic TBLG production during the period. See Domestic Producers' Questionnaire Response of Precision Products at Questions V-3a-3d; CR/PR at Table III-1. We note that all responding domestic producers reported that they produced products other than TBLGs, such as ***, using the same equipment used to produce TBLGs in 2008. See CR/PR at Table III-2.

Channels of distribution

Most producers, importers, and purchasers reported that the four types of TBLGs are either fully or mostly distributed through similar channels of distribution.⁴⁵ Domestic producers and importers reported that *** percent and *** percent of their U.S. shipments, respectively, were made to “distributors,” which was understood to include retailers.⁴⁶ Agri-Fab, Superpower, and Swisher, an importer of subject merchandise from China, agree that all TBLGs are distributed through the same channels of distribution, with most sold to large home improvement retailers such as Sears, Lowe’s, TSC, and Home Depot.⁴⁷

Customer and producer perceptions

Producers, importers, and purchasers were divided on the extent to which customers and producers perceive the four types of TBLGs to be similar.⁴⁸ Domestic producers reported that customers and producers perceive the four types of TBLGs as fully or mostly similar with respect to just under half of their comparisons of one type of TBLG to another, but not at all similar with respect to just over half of their comparisons.⁴⁹ Importers and purchasers reported that customers and producers perceive the four types of TBLGs as not at all similar with respect to about two-thirds of their comparisons of one type of TBLG to another, but fully, mostly, or somewhat similar with respect to about one-third of their comparisons.⁵⁰

The way in which the four types of TBLGs are marketed also suggests that customers and producers perceive both similarities and differences among the products. Agri-Fab reports that large retailers typically employ a buyer dedicated to purchasing TBLGs, as opposed to push groomers or other products, and that its sales representatives market the four types of TBLGs to retailers as a single product

⁴⁵ CR/PR at Table I-8. Out of 128 comparisons of one type of TBLG with another, questionnaire respondents reported that the channels of distribution for the products were fully similar with respect to 60 comparisons, mostly similar with respect to 54 comparisons, somewhat similar with respect to 12 comparisons, and not at all similar with respect to two comparisons. See id.

⁴⁶ CR at II-1; PR at II-1; CR/PR at Table II-1 & nn.1-2.

⁴⁷ See Agri-Fab Prehearing Br. at 5; Superpower Prehearing Br. at 16; Hearing Tr. at 16 (Cohan) (“The vast majority of our sales are to home improvement retailers, and a good number of these sales are to a few large national or regional retail chains.”); Conference Tr. at 26 (Cohan) (“The vast majority of our sales are to home improvement retailers . . .”), 44 (Harshamn), 100 (Swisher) (testifying that the channels of distribution for subject imports and the domestic like product are “very similar, very similar.”).

⁴⁸ CR at I-27; PR at I-22.

⁴⁹ CR at I-27; PR at I-22; CR/PR at Table I-7. Out of 26 comparisons of one type of TBLG with another, responding producers reported that customer and producer perceptions of the products were fully similar with respect to six comparisons, mostly similar with respect to six comparisons, somewhat similar with respect to zero comparisons, and not at all similar with respect to 14 comparisons. See id. at Table I-7.

⁵⁰ CR at I-27; PR at I-22; CR/PR at Table I-7. Out of 36 comparisons of one type of TBLG with another, responding importers reported that customer and producer perceptions of the products were fully similar with respect to six comparisons, mostly similar with respect to six comparison, somewhat similar with respect to zero comparisons, and not at all similar with respect to 24 comparisons. See id. at Table I-7. Out of 54 comparisons of one type of TBLG with another, responding purchasers reported that customer and producer perceptions of the products were fully similar with respect to six comparisons, mostly similar with respect to one comparison, somewhat similar with respect to nine comparisons, and not at all similar with respect to 38 comparisons. See id.

line.⁵¹ Although purchasers often purchase different types of TBLGs from different manufacturers,⁵² several large retailers purchase all four types of TBLGs from a single manufacturer, with *** and *** carrying the full *** line and *** carrying the full *** line.⁵³

There is also evidence that some retailers market TBLGs to consumers as a single family of products. Both Agri-Fab and Swisher, in the preliminary phase investigations, indicated that retailers typically market TBLGs to consumers as a family of complementary products.⁵⁴ Agri-Fab submitted photographs of all four types of TBLGs displayed together in a Lowe's retail establishment and provided sales flyers from three retailers that advertised three or four different types of TBLGs together, along with mowers and other types of lawn equipment.⁵⁵

On the other hand, *** of 14 responding purchasers reported that they do not market the four types of TBLGs together.⁵⁶ Agri-Fab's and Brinly-Hardy's product catalogs organize the four types of TBLGs into different sections, often interspersed with nonsubject products like rollers, carts, vacuums, and, in Agri-Fab's case, push groomers.⁵⁷ Similarly, Sears markets the four types of TBLGs among ten categories of "tractor attachments" on its website, with a single section marketing "aerators & dethatchers," with separate sections marketing "lawn sweepers & vacs" and "sprayers & spreaders."⁵⁸

⁵¹ CR at I-27; PR at I-22. In response to Vice Chairman Pearson's request for "some documentation that {Agri-Fab's} salesmen actually are marketing the four products together as a group," Hearing Tr. at 87, Agri-Fab submitted ***. Agri-Fab Responses to Commissioner Questions at A-10, Exhibit 5. Agri-Fab also submitted ***. Agri-Fab Prehearing Br. at Exhibit 2.

⁵² CR at I-29 n.54; PR at I-23 n.54; Hearing Tr. at 48-49 (Harvey) ("[T]raditionally in the past it was more of a one stop shop. The customer would come to us and buy pretty much all the products at once. But that's one of the changes we've seen in the industry and in the marketplace is that as these lower priced products became available from China we started to see more what we call cherry-picking where they will pick a lower priced aerator or spreader or something like that from the Chinese competition, and then fill the rest of the line out with our or maybe with some other domestic producers' product.").

⁵³ CR at II-3; PR at II-2; see also Purchasers' Questionnaire Response of *** at Question V-1 (***); Purchasers' Questionnaire Response of *** at Question V-1 (***); Purchasers' Questionnaire Response of *** at Question V-1 (***); see also Agri-Fab Prehearing Br. at 5. We note that *** and *** were the only domestic producers of all four types of TBLGs. CR at VI-1; PR at VI-1.

⁵⁴ Hearing Tr. at 25 (Smirnow) ("Part of the reason lawn groomers are viewed as one like product is because lawn groomers are sold alongside one another in the same sections of the same home improvement retail stores."), 35 (Cohan) (testifying that retailers display the four types of TBLGs "usually all right together."); Conference Tr. at 88 (Swisher) ("Our entry into the lawn grooming product line was motivated by several factors. Several of our long-time [retail] customers had been asking us to consider this category . . .") (emphasis added).

⁵⁵ CR at I-28; PR at I-22-23; Agri-Fab Responses to Commissioner Questions at A-10-11, Exhibit 9 (sales flyers from ***); Agri-Fab Prehearing Br. at Exhibit 7 (***).

⁵⁶ CR at II-2; PR at II-1.

⁵⁷ Agri-Fab's product catalog features separate sections on "sweepers," "spreaders," and "groomers" (including aerators and dethatchers), including both push and tow-behind groomers in each section. See Petition at Exhibit 7. Agri-Fab claims that its catalogs are for "general distribution," and are not the focus of its sales presentations to customers. CR at I-28; PR at I-22. Brinly-Hardy's product catalog has separate sections for spreaders, sweepers, dethatchers, plug aerators, and spike aerators, as well as nonsubject lawn rollers. See Petition at Exhibit 9.

⁵⁸ CR at I-28; PR at I-22; Superpower Prehearing Br. at Exhibit 4.

Consequently, producers and retailers do not agree on how different types of TBLGs should be grouped together in their catalogs and websites.⁵⁹ This evidence suggests that no clear dividing line exists.

Price

Producers, importers and purchasers reported that prices for the four types of TBLGs are “mostly similar” or “somewhat similar” with respect to a majority of comparisons of one type of TBLG with another, but “not at all similar” with respect to a significant minority of comparisons.⁶⁰ Agri-Fab reports that TBLGs are priced from \$60 to \$400, depending on the type of TBLG and its particular attributes (e.g., size).⁶¹ The price ranges for tow-behind sweepers, aerators, and spreaders substantially overlap in the middle of the TBLG price range, while the price ranges for aerators, spreaders, and dethatchers substantially overlap on the lower end of the TBLG price range.⁶² The price ranges for dethatchers and sweepers reported by Agri-Fab, however, do not overlap at all.⁶³ Pricing product data collected by the Commission also indicate that sweepers, spreaders, and aerators are priced within a similar range, but that prices for dethatchers were significantly lower than prices for sweepers, spreaders, and aerators.⁶⁴

Conclusion

The record indicates that tow-behind aerators, dethatchers, spreaders, and sweepers possess both similarities and differences with respect to their physical characteristics and uses, interchangeability, and customer and producer perceptions, but predominantly similarities with respect to channels of distribution, manufacturing facilities, production processes, and production employees, and price.

On balance, on this record and applying the factors discussed above, we cannot discern clear enough dividing lines to warrant finding multiple like products, as advocated by Superpower. Among other pertinent facts, combination and modular TBLGs are interchangeable with individual TBLGs performing the same functions, and there is a significant market for such products. Customers and

⁵⁹ Specifically, producers and retailers do not agree with Superpower’s argument that a clear dividing line separates TBLGs into three domestic like products consisting of spreaders, aerators, and sweepers/de-thatchers. In Agri-Fab’s product catalog, aerators and dethatchers are grouped together within a single “groomers” category, with separate sections for sweepers and spreaders. See Petition at Exhibit 7. Precision Products also devotes a single section of its website to “aerators/dethatcher/seeders,” but separate sections to “lawn sweepers” and “spreaders.” Agri-Fab Prehearing Br. at Exhibit 4. On its website, Sears has a single section marketing “aerators & dethatchers,” with separate sections marketing “lawn sweepers & vacs” and “sprayers & spreaders.” Superpower Prehearing Br. at Exhibit 4. By contrast, Brinly-Hardy’s product catalog has separate sections for each type of TBLG. See Petition at Exhibit 9.

⁶⁰ CR at I-32; PR at I-25; CR/PR at Table I-9. Out of 134 comparisons of one type of TBLG with another, responding producers, importers, and purchasers reported that product prices were fully similar with respect to zero comparisons, mostly similar with respect to 25 comparisons, somewhat similar with respect to 52 comparisons, and not at all similar with respect to 57 comparisons. Id. at Table I-9.

⁶¹ CR at I-32; PR at I-25. Average unit value data concerning the domestic industry’s U.S. shipments generally corroborate Agri-Fab’s reported price ranges for each type of TBLG. See CR/PR at Tables C-2-5. In 2008, the average unit value of sweepers was highest, at \$***; the average unit values of aerators and spreaders were next highest, at \$*** and \$***, respectively; and the average unit value of dethatchers was the lowest, at \$***. See id.

⁶² CR at I-32; PR at I-25.

⁶³ CR at I-32; PR at I-25.

⁶⁴ See CR/PR at Tables V-1-7.

producers disagree as to how to group together different types of TBLGs within the broad category of TBLGs, indicating that a clear dividing line does not exist. Thus, although this is a close issue, we define a single domestic like product encompassing the continuum of TBLG products within the scope of the investigations.^{65 66 67}

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.”⁶⁸ 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 definition of the domestic like product and our analysis of related parties below, we define the domestic industry as all domestic producers of TBLGs, including Agri-Fab, Brinly-Hardy, and Spyker Spreaders, but excluding ***.⁶⁹

⁶⁵ In the preliminary phase of these investigations, the Commission defined the domestic like product to include TBLG parts within the scope of the investigations, based on its semi-finished products analysis. USITC Pub. 4028 at 10 n.72; Confidential Preliminary Views at 13 n.72. In these final phase investigations, Agri-Fab again argues that the Commission should define the domestic like product to include TBLG parts. There is no contrary evidence on the record of these final phase investigations concerning this issue, and no party has argued that the Commission should define TBLG parts as a separate like product. Accordingly, we define the domestic like product to include TBLG parts.

⁶⁶ As in the preliminary phase of these investigations, we also do not expand the domestic like product beyond the scope of the investigations to include tow-behind sprayers and push spreaders. See USITC Pub. 4028 at 12-14; Confidential Preliminary Views at 14-20. There is no new information in the final phase of these investigations that would warrant our reconsideration of those findings. Although the Commission expressed a willingness to reconsider this issue in the final phase investigations, no party proposed that we seek data on any out-of-scope products in our questionnaires. Therefore, we have not reconsidered our preliminary findings.

⁶⁷ Commissioner Pinkert notes that he found in the preliminary phase of the investigation that the record supported finding at least four domestic like products (aerators, dethatchers, sweepers, and spreaders). Nevertheless, for purposes of the preliminary phase, he joined the rest of the Commission in finding a single domestic like product that was coextensive with the scope of the investigation because of the possibility that additional information in any final phase of the investigation might alter this finding. Preliminary Determination at 7 n.40. In this final phase of the investigation, he again finds a single like product. Although he has considered all of the record evidence discussed in the text, he relies for this finding largely on evidence, developed for the most part since the preliminary phase, indicating significant production and sales by different market participants of combination or modular products that combine certain physical elements and functions of different TBLGs. CR at I-19-20, 26; PR at I-15-16, 21; Agri-Fab Responses to Commissioner Questions at A-6, 33 and Exhibit 6; Agri-Fab Responses to Commission Staff Questions at 2; Hearing Tr. at 10-11, 30; Petition at Exhibit I-9. As noted in the text, the Commission has been instructed by Congress to look for clear dividing lines among products, and the existence of these combination and modular units tends to blur the distinctions among the different types of TBLGs in terms of their physical characteristics and uses and thus narrowly tilts the balance in this case toward finding them to comprise a single domestic like product.

⁶⁸ 19 U.S.C. § 1677(4)(A).

⁶⁹ CR/PR at Table III-1. Vice Chairman Pearson and Commissioners Okun and Pinkert define the domestic industry as all domestic producers of TBLGs, including ***, but excluding *** and ***.

A. Related Parties

We must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). Subsection 1677(4)(B) allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.⁷⁰ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each investigation.

In the preliminary phase of these investigations, the Commission determined that circumstances warranted the exclusion of *** from the domestic industry as a related party.⁷¹ In the final phase of these investigations, we have examined whether two domestic producers – *** and *** – are related parties and should be excluded from the industry by virtue of their imports of subject merchandise.

1. ***

In the final phase of these investigations, we find that *** qualifies as a related party because it imported TBLGs from China during the period examined.⁷² *** demonstrated a waning commitment to domestic production during the period examined, as its domestic production declined from *** units in 2006 and *** units in 2007 to only *** units in 2008.⁷³ As it reduced its domestic production, *** increased its imports of TBLGs from China dramatically, from *** units in 2006 to *** units in 2007 and *** units in 2008.⁷⁴ As of 2008, *** primary interest was in importing TBLGs from China. After Commerce's imposition of provisional measures, however, *** imported *** TBLGs from China and produced *** TBLGs domestically in the first quarter of 2009.⁷⁵

⁷⁰ 19 U.S.C. § 1677(4)(B).

⁷¹ USITC Pub. 4028 at 15-16; Confidential Preliminary Views at 22-23.

⁷² See CR/PR at Table III-9; 19 U.S.C. § 1677(4)(B). Agri-Fab argues that *** is a related party that should be excluded from the domestic industry because it changed from being a domestic producer of TBLGs to an importer of TBLGs from China during the period examined. Agri-Fab Prehearing Br. at 13-14. Superpower did not address the issue of related parties.

⁷³ CR/PR at Table III-9.

⁷⁴ CR/PR at Table III-9; Importers' Questionnaire Response of *** at Question II-3.

⁷⁵ See Importers' Questionnaire Response of *** at Question II-3; Domestic Producers' Questionnaire Response of *** at Question V-3d. Commerce imposed provisional countervailing duty measures at margins ranging from 13.3 to 254.52 percent in November 2008 and provisional antidumping duty measures at margins ranging from 154.72 to 324.43 percent in January 2009. Confidential Prehearing Staff Report at Tables I-1-2; Public Prehearing Staff Report at Tables I-1-2.

The domestic operations of *** also appear to have benefitted from its importation of dumped and subsidized TBLGs from China.^{76 77} In this regard, *** margin was significantly higher than that of any other domestic producer throughout the period of investigation.⁷⁸ *** indicated that ***⁷⁹ Nonetheless, the inclusion or exclusion of *** data would not skew the data for the rest of the industry because *** accounted for *** percent of domestic TBLG production during the period examined.⁸⁰ Because the record indicates that *** primary interest had shifted to importing TBLGs from China before Commerce's imposition of provisional measures, we find that circumstances warrant the exclusion of *** from the domestic industry.

2. ***

*** was primarily an importer of TBLGs from China during the period examined and produced *** TBLGs domestically ***, when it produced *** units.⁸¹ The volume of *** imports of TBLGs from China was *** units in 2006, *** units in 2007, *** units in 2008, and *** units in the first quarter of 2008.⁸² *** imported *** TBLGs from China in the first quarter of 2009,⁸³ however, and ***.⁸⁴ Since *** reported *** domestic production data for 2006, 2007, or 2008, the inclusion or exclusion of its data would not skew the data for the rest of the industry.⁸⁵ The Commission is evenly divided over whether *** should be excluded from the industry under the related parties provision.^{86 87}

⁷⁶ 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 interest lie in domestic production or importation. Based on the record of the final phase of these investigations, Chairman Aranoff finds that appropriate circumstances exist to exclude *** from the domestic industry.

⁷⁷ Commissioner Pinkert does not rely upon this company's financial performance as a factor in determining whether there are appropriate circumstances to exclude it from the domestic industry. The record is not sufficient to infer from the company's profitability on U.S. operations whether it has derived a specific benefit from importing. See Allied Mineral Products v. United States, 28 C.I.T. 1861, 1865-1867 (2004).

⁷⁸ See CR/PR at Table VI-2.

⁷⁹ See Domestic Producers' Questionnaire Response of *** at Question III-15 (***).

⁸⁰ CR/PR at Table III-1.

⁸¹ CR/PR at Table III-9. *** inventoried *** of its domestically-produced TBLGs and made *** U.S. shipments of domestically-produced TBLGs in the first quarter of 2009. Domestic Producers' Questionnaire Response of *** at Question II-9.

⁸² CR/PR at Table III-9.

⁸³ CR/PR at Table III-9.

⁸⁴ *** also claims that *** Domestic Producers' Questionnaire Response of *** at Questions I-3 and II-12 n. 1.

⁸⁵ *** accounted for *** percent of domestic industry production during the period of investigation. CR/PR at Table III-1.

⁸⁶ Chairman Aranoff and Commissioners Lane and Williamson note that between 2006 and 2008 *** was an importer, not a domestic producer, such that the related parties provision would not apply. See CR/PR at Table III-9. In interim 2009, the only period in which *** was a domestic producer, it imported no subject merchandise, indicating that its primary interest was in domestic production. See id.

⁸⁷ Vice Chairman Pearson and Commissioners Okun and Pinkert find *** qualifies as a related party and that
(continued...)

In conclusion, we define the domestic industry as all domestic producers of TBLGs with the exception of ***.⁸⁸

IV. MATERIAL INJURY BY REASON OF IMPORTS OF SUBJECT MERCHANDISE FROM CHINA⁸⁹

A. Legal Standards

In the final phase of antidumping and 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.⁹⁰ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁹¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁹² 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.⁹³ 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.”⁹⁴

Although the statute requires the Commission to determine whether the domestic industry is “materially injured by reason of” unfairly traded imports,⁹⁵ 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.⁹⁶ 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

⁸⁷ (...continued)

circumstances warrant its exclusion from the domestic industry because *** was *** an importer of TBLGs from China until after Commerce’s imposition of provisional measures.

⁸⁸ Vice Chairman Pearson and Commissioners Okun and Pinkert define the domestic industry as all domestic producers with the exception of *** and ***.

⁸⁹ In these investigations, subject imports accounted for more than 3 percent of the volume of TBLGs imported into the United States from all sources in the most recent 12-month period for which data are available preceding the filing of the petition. CR at IV-3; PR at IV-1. Thus, we find that subject imports are not negligible under 19 U.S.C. § 1677(24).

⁹⁰ 19 U.S.C. §§ 1671d(b), 1673d(b).

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

⁹² 19 U.S.C. § 1677(7)(A).

⁹³ 19 U.S.C. § 1677(7)(C)(iii).

⁹⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁹⁵ 19 U.S.C. §§ 1671d(a), 1673d(a).

⁹⁶ 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’d, 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

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.⁹⁷

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 non-subject 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.⁹⁸ In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.⁹⁹ Nor does the “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 non-subject

⁹⁷ 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).

⁹⁸ Statement of Administrative Action (“SAA”) on Uruguay Round Agreements Act (“URAA”), H.R. Rep. 103-316, Vol. I at 851-52 (1994) (“{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.

⁹⁹ 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, Invs. 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,’ 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.”).

imports, which may be contributing to overall injury to an industry.¹⁰⁰ It is clear that the existence of injury caused by other factors does not compel a negative determination.¹⁰¹

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.”^{102 103} Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”¹⁰⁴

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 non-subject 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 non-subject imports.¹⁰⁵ The additional “replacement/benefit” test looked at whether non-subject 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

¹⁰⁰ S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

¹⁰¹ See Nippon Steel Corp., 345 F.3d at 1381 (“an affirmative material-injury 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.”).

¹⁰² 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.

¹⁰³ 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, in certain circumstances, to undertake a particular kind of analysis of non-subject 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.

¹⁰⁴ 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.”).

¹⁰⁵ Mittal Steel, 542 F.3d at 875-79.

injury from non-subject imports or other factors to subject imports.¹⁰⁶ 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 non-subject 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.^{107 108}

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.¹⁰⁹ Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.¹¹⁰

B. Conditions of Competition

Several conditions of competition inform our analysis in the final phase of these investigations.

1. Demand Conditions

Demand for TBLGs largely depends upon the overall economy, consumers' discretionary income, and weather conditions, but is also influenced by the housing market.¹¹¹ According to the National Association of Realtors, the index of pending sales of existing homes decreased by 24.2 percent from 2006 to 2008 and was 7.1 percent lower in March 2009 than in March 2008.¹¹² Although this decline in home sales may have affected sales of TBLGs, it is unclear whether existing homeowners have changed their TBLG consumption patterns based on the housing market.¹¹³ TBLG purchases are also seasonal, with most TBLG sales concentrated in the January-May period, with a leveling off of TBLG

¹⁰⁶ 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).

¹⁰⁷ Commissioner Lane also refers to her dissenting views in Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates, Invs. Nos. 731-TA-1131 to 1134 (Final), USITC Pub. 4040 (Oct. 2008), for further discussion of Mittal Steel.

¹⁰⁸ 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 non-subject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large non-subject 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 non-subject imports.

¹⁰⁹ We provide in our respective discussions of volume, price effects, and impact a full analysis of other factors alleged to have caused any material injury experienced by the domestic industry.

¹¹⁰ 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.").

¹¹¹ CR at II-7; PR at II-4.

¹¹² CR at II-9; PR at II-5.

¹¹³ CR at II-7; PR at II-4. Agri-Fab contends that homeowners trying to sell their house in a depressed housing market might groom their lawns in order to increase their home's "curb appeal" and reported that TBLGs are designed to have a useful life of approximately *** under normal operating conditions. CR at II-8; PR at II-4-5.

sales in the summer months and a slight increase in sweeper sales in the fall.¹¹⁴

*** of *** domestic producers reported that TBLG demand had *** since January 2006, citing the weakness of the housing market and the economic downturn.¹¹⁵ Agri-Fab reported that the downturn in the economy and the housing market began to affect sales of TBLGs toward the end of 2008.¹¹⁶ ***, however, reported that demand had increased due to rural development and the increased use of power lawn equipment.¹¹⁷ *** responding importers reported that TBLG demand had declined since January 2006, citing the housing market, general economic conditions, and decreased sales of lawn equipment, although one responding importer reported no change.¹¹⁸ Seven responding purchasers reported that TBLG demand had decreased since January 2006, but three reported that it had increased.¹¹⁹

Apparent U.S. consumption of TBLGs increased *** percent between 2006 and 2007, from *** units to *** units, but declined *** percent between 2007 and 2008, to *** units, for an overall *** percent decline between 2006 and 2008.¹²⁰ Apparent U.S. consumption in the first quarter of 2009, at *** units, was *** percent lower than in the first quarter of 2008, at *** units.¹²¹

2. Supply Conditions

The U.S. market for TBLGs is supplied by domestic production, subject imports, and nonsubject imports from Mexico. U.S. producers accounted for the majority of apparent U.S. consumption throughout the period examined.¹²² Nonsubject imports were the next largest supply source in 2006, but were overtaken by subject imports in 2007 and 2008.¹²³

Agri-Fab and Brinly-Hardy were *** domestic producers during the period examined, accounting for *** percent and *** percent of domestic TBLG production, respectively.¹²⁴ Spyker Spreaders accounted for *** percent of domestic TBLG production over the period and ***.¹²⁵ Domestic TBLG capacity remained fairly constant during the period of investigation, although unused capacity grew from 2006 to 2008 as production declined.¹²⁶

¹¹⁴ CR at II-9; PR at II-5

¹¹⁵ CR at II-7; PR at II-4 (excluding ***).

¹¹⁶ CR at II-7-8; PR at II-4; Hearing Tr. at 20 (Harvey) (“The downturn in both the housing market and the economy in general has certainly hurt.”), 52 (Harvey) (“Getting into late 2008 certainly we saw or we felt like there were declines in the overall industry and overall demand related to the economy and the housing situation.”), 63 (Harvey) (“I think, you know, our retailers, our customers, tend to try to forge ahead with business as well as they can, and they continued to try to drive volume maybe even when the housing market did start to weaken, which helped us some. But again, we really didn’t see much of the weakness, the general weakness, until later in 2008.”).

¹¹⁷ CR at II-7; PR at II-4.

¹¹⁸ CR at II-7-8; PR at II-4.

¹¹⁹ CR at II-8; PR at II-4.

¹²⁰ CR/PR at Table IV-6.

¹²¹ CR/PR at Table IV-6.

¹²² CR/PR at Table IV-6.

¹²³ CR/PR at Table IV-6.

¹²⁴ CR/PR at Table III-1.

¹²⁵ CR/PR at Tables III-1, VI-2 n.2.

¹²⁶ CR/PR at Tables C-6, 10. Domestic industry capacity declined *** from *** units in 2006 to *** units in 2008, for an overall decline of *** percent. Id. Including ***, domestic TBLG capacity was *** higher in January- (continued...)

Subject import shipments increased by over *** percent from 2006 to 2008, growing from *** percent of apparent U.S. consumption in 2006 to *** percent of apparent U.S. consumption in 2008.¹²⁷ Nonsubject import shipments declined from *** percent of apparent U.S. consumption in 2006 to *** percent of apparent U.S. consumption in 2008.¹²⁸ Nonsubject imports consisted entirely of *** imported from Mexico ***.¹²⁹

3. Substitutability

The record indicates that there is a high degree of substitutability between TBLGs of the same type, regardless of the source. All responding domestic producers, half of responding importers, and all but one responding purchasers reported that subject imports are always or frequently interchangeable with the domestic like product.¹³⁰ Indeed, Agri-Fab claims that subject imported TBLGs are exact copies of its own TBLGs.¹³¹ All or nearly all responding purchasers reported that the domestic like product and subject imports are comparable in terms of availability, delivery terms, discounts offered, extension of credit, minimum quantity requirements, product consistency, quality meeting or exceeding industry standards, product range, and reliability of supply.¹³² With respect to price, five responding purchasers reported that the domestic like product is inferior to subject imports (*i.e.*, is generally higher in price), five reported that it is comparable, and one reported that it is superior.¹³³ A slight majority (7 of 11) of responding purchasers reported that the domestic like product is superior to subject imports in terms of delivery time.¹³⁴

The record also indicates that price is an important consideration, although not the only consideration, when purchasers are choosing among competing suppliers of TBLGs.¹³⁵ Most responding

¹²⁶ (...continued)

March 2009, at *** units, than in January-March 2008, at *** units. CR/PR at Table C-6. Excluding *** , domestic TBLG capacity was *** lower in January-March 2009, at *** units, than in January-March 2008, at *** units. CR/PR at Table C-10.

¹²⁷ CR/PR at Table IV-6. Subject import shipments were *** units, or *** percent of apparent U.S. consumption, in January-March 2009, as compared to *** units, or *** percent of apparent U.S. consumption, in January-March 2008. *Id.*

¹²⁸ CR/PR at Table IV-6. Nonsubject import shipments were *** units, or *** percent of apparent U.S. consumption, in January-March 2009, as compared to *** units, or *** percent of apparent U.S. consumption, in January-March 2008. *Id.*

¹²⁹ CR at VII-8; PR at VII-4.

¹³⁰ CR at II-14; PR at II-9; CR/PR at Table II-4.

¹³¹ Agri-Fab Prehearing Br. At 18; Hearing Tr. at 13-14 (Cohan) (“In many cases, Chinese producers are exporting products to the U.S. that are direct copies of our own products At the invitation of a Chinese manufacturer, we went to China to view its manufacturing facility and observe the company copying our products. We later discovered that this producer had obtained pictures from our website and samples of our products which had been used to reverse engineer our groomers.”).

¹³² CR at II-17; PR at II-10; CR/PR at Table II-6.

¹³³ CR at II-17; PR at II-10; CR/PR at Table II-6.

¹³⁴ CR at II-17; PR at II-10; CR/PR at Table II-6.

¹³⁵ See CR at II-11; PR at II-7; see also Hearing Tr. at 16-17 (Cohan) (“For a long time, both we and our customers perceived value to constitute a complete package of service and quality. While it was important to sell our products at a reasonable price, it was just as important, if not more so, to have the best customer service, product
(continued...)”)

domestic producers reported that differences other than price are sometimes significant, while most responding importers reported that differences other than price, such as quality, lead time and availability, are frequently significant.¹³⁶ Nevertheless, the record indicates no meaningful differences between domestic and subject imported TBLGs with respect to non-price factors.

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹³⁷

The volume and market share of subject imports both increased significantly between 2006 and 2008. Subject import volume increased *** percent over the period, from *** units in 2006 to *** units in 2007 and *** units in 2008.¹³⁸ The volume of U.S. shipments of subject imports increased by *** percent over the same period, from *** units in 2006, or *** percent of apparent U.S. consumption, to *** units in 2007, or *** percent of apparent U.S. consumption, and *** units in 2007, or *** percent of apparent U.S. consumption.¹³⁹ It is particularly noteworthy that the quantity of U.S. shipments of subject imports increased *** percent between 2007 and 2008 notwithstanding the *** percent decline in apparent U.S. consumption over the period.¹⁴⁰

The *** percentage points of market share that subject imports captured between 2006 and 2008 came *** at the expense of the domestic industry, which lost *** percentage points of market share over the period.¹⁴¹ As subject imports displaced domestic TBLGs 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 2008.¹⁴²

Subject import volume was *** percent lower in January-March 2009, at *** units, than in January-March 2008, at *** units.¹⁴³ U.S. shipments of subject imports were *** percent lower in January-March 2009, at *** units or *** percent of apparent U.S. consumption, than in January-March

¹³⁵ (...continued)

range and availability, technical support and warranty coverage. This combination of factors was where we could show our customers that we were offering the best value for our products. Now the game has changed. While you still hear the term value, it has come to mean that price is the factor above all others. When our customers come to us explaining the need to offer the best value for our products, it is nothing more than their way of asking us to lower our prices to meet the Chinese imports.”). When asked to list the top three factors considered when choosing among suppliers, 9 of 14 purchasers ranked “price” as their first or second most important factor, behind only “quality,” which 12 of 14 purchasers ranked as their first or second most important factor. CR/PR at Table II-2. Twelve of 14 purchasers ranked “price” as a “very important” factor used in making purchasing decisions. CR/PR at Table II-3.

¹³⁶ CR at II-15; PR at II-10; CR/PR at Table II-5 (Two domestic producers reported that differences other than price are sometimes significant, while one reported that such differences are frequently significant. Three importers reported that differences other than price are frequently significant, while one reported that such differences are sometimes significant.).

¹³⁷ 19 U.S.C. § 1677(7)(C)(i).

¹³⁸ CR/PR at Table IV-3.

¹³⁹ CR/PR at Table IV-6.

¹⁴⁰ CR/PR at Table IV-6.

¹⁴¹ CR/PR at Table IV-6.

¹⁴² CR/PR at Table IV-8.

¹⁴³ CR/PR at Table IV-3.

2008, at *** units or *** percent of apparent U.S. consumption.¹⁴⁴ The significantly lower level of subject import volume in January-March 2009 than in January-March 2008, however, corresponds to Commerce's imposition of provisional countervailing duty measures in November 2008 and provisional antidumping duty measures in January 2009.¹⁴⁵ Thus, we accord less weight to the data for interim 2009 as it accounts for a single quarter and the trend in these data is related to the pendency of the investigations.¹⁴⁶

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 also is significant.

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁴⁷

As addressed in section IV.B.3. above, the record indicates that there is a high degree of substitutability between subject imports and the domestic like product with respect to TBLGs of the same type and that price is an important consideration for purchasers choosing among competing TBLG suppliers.¹⁴⁸ As further evidence of the importance of price to purchasing decisions, we note that two purchasers, when queried by Commission staff about domestic producer allegations of lost sales and lost revenues, acknowledged that they switched their purchases from the domestic like product to subject imports due to price.¹⁴⁹

*** domestic producers and *** importers provided usable quarterly net U.S. f.o.b. selling price data for seven products.¹⁵⁰ Pricing data reported in the final phase of these investigations by these firms

¹⁴⁴ CR/PR at Table IV-6.

¹⁴⁵ Commerce imposed provisional countervailing duty measures at margins ranging from 13.3 to 254.52 percent in November 2008 and provisional antidumping duty measures at margins ranging from 154.72 to 324.43 percent in January 2009. Confidential Prehearing Staff Report at Tables I-1-2; Public Prehearing Staff Report at Tables I-1-2.

¹⁴⁶ 19 U.S.C. § 1677(7)(I) provides, in relevant part, that “[t]he Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation under part I or II of this subtitle is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury”

¹⁴⁷ 19 U.S.C. § 1677(7)(C)(ii).

¹⁴⁸ See CR at II-9-11; PR at II-5-7; CR/PR at Table II-2.

¹⁴⁹ CR at V-28-29; PR at V-7-8 (*** and *** both reported that they had increased purchases of subject imports, and reduced purchases of the domestic like product, due to the lower price of subject imports).

¹⁵⁰ CR at V-6; PR at V-4. Not all firms reported prices for all products for all quarters. Because we excluded *** from the domestic industry as a related party, we also have excluded pricing data reported by *** from our analysis. We note that *** reported pricing data for ***. Domestic Producers' Questionnaire Response of *** at Question IV-2. Because no subject import pricing data were reported for ***, and *** accounted for only *** percent of domestic shipments of product 3 in the first quarter of 2009, the exclusion of *** pricing data had no

(continued...)

accounted for approximately *** percent of the domestic industry's U.S. shipments of TBLGs and *** percent of U.S. shipments of subject imports from China.¹⁵¹ These data indicate that subject imports pervasively undersold the domestic like product throughout the period of investigation, with the exception of product ***.¹⁵²

Specifically, between the first quarter of 2006 and the fourth quarter of 2008, subject imports undersold the domestic like product in *** of *** quarterly comparisons, or *** percent of the time, at margins ranging from *** to *** percent.¹⁵³ Although subject imports generally oversold the domestic like product with respect to product ***,¹⁵⁴ subject imports undersold the domestic like product in *** quarterly comparisons, *** of *** quarters, with respect to products ***, which accounted for *** of both subject import and domestic like product shipments covered by pricing data.¹⁵⁵ Accordingly, we find subject import underselling of the domestic like product to be significant.¹⁵⁶

We do not find that subject import underselling depressed or suppressed prices for the domestic like product to a significant degree. Domestic prices for all products but product 2 were higher in the fourth quarter of 2008 than in the first quarter of 2006.¹⁵⁷ Domestic prices for all pricing products

¹⁵⁰ (...continued)

effect on our analysis of subject import underselling in those quarters. *** reported no pricing data. See Domestic Producers' Questionnaire Response of *** at Question IV-2.

¹⁵¹ See CR at V-6; PR at V-4.

¹⁵² See CR/PR at Tables V-8-9. We note that coverage of subject imports was low with respect to product 4, with importers reporting total shipments of *** units in *** quarters, including ***. Id. at Table V-4. Based on these data, subject imports undersold the domestic like product in *** of the *** quarterly comparisons between the first quarter of 2006 and the fourth quarter of 2008 at margins ranging from *** to *** percent. Id. Subject imports oversold the domestic like product in *** at a margin of *** percent. Id.

¹⁵³ CR/PR at Tables V-1-7, 9. As noted above, we give less weight to pricing data for the first quarter of 2009 because it is a single quarter and we find these data to be influenced by the pendency of the investigations. In the first quarter of 2009, subject imports undersold the domestic like product in *** quarterly comparisons, at margins ranging from *** to *** percent, and oversold the domestic like product in *** quarterly comparisons, at margins ranging from *** to *** percent. Id. at Tables V-1-7. We note that Commerce's imposition of provisional measures would not have directly affected prices for the *** of subject import shipments in the first quarter of 2009 that were sold out of inventory. U.S. commercial shipments of subject imports amounted to *** units in the first quarter of 2009, while only *** units were imported from China during the period. Compare CR/PR at Table IV-3 with id. at Table IV-6.

¹⁵⁴ CR/PR at Table V-7. With respect to product ***, subject imports oversold the domestic like product in *** quarterly comparisons, at margins ranging from *** to *** percent, and undersold the domestic like product in *** quarterly comparisons, at margins ranging from *** to *** percent. Id.

¹⁵⁵ CR/PR at Table V-9. Products *** accounted for *** percent (***) of *** units) of subject import shipments covered by pricing data and *** percent (***) of *** units) of domestic like product shipments covered by pricing data. See id. at Tables V-1-7.

¹⁵⁶ We also find it noteworthy that ***, which accounted for *** percent of all TBLG imports from China during the period of investigation, reported delivered purchase prices that indicate that it paid, on average, *** percent less for subject imported TBLGs than for comparable domestically produced TBLGs. See CR/PR at Tables F-1-5. The delivered purchase prices for subject imports paid by *** were lower than its delivered purchase prices for the domestic like product in *** of *** quarterly comparisons, at margins ranging from *** to *** percent for product 2, *** to *** percent for product 4, *** to *** percent for product 5, *** to *** percent for product 6, and *** to *** percent for product 7. See id. These data lend additional support to our finding that subject import underselling was significant during the period of investigation.

¹⁵⁷ See CR/PR at Tables V-1-7. The domestic price of product 2 was *** percent lower in the fourth quarter of
(continued...)

generally fluctuated within a narrow band from the first quarter of 2006 until the fourth quarter of 2008.¹⁵⁸ The industry's ratio of domestic industry cost of goods sold ("COGS") to the value of its net sales fluctuated from 2006 to 2008, declining *** overall from *** percent in 2006 to *** percent in 2008.¹⁵⁹

The principal adverse impact of subject import underselling on the domestic industry was its significant contribution to the *** percentage point market share shift from domestic producers to subject imports between 2006 and 2008.¹⁶⁰ The record evidence concerning sales lost by domestic producers to subject imports supports our finding that subject import underselling significantly contributed to the domestic industry's loss of market share to subject imports. *** purchasers either partly or fully confirmed lost sales allegations involving *** units worth \$***. In addition, *** purchaser, although *** lost sales allegations involving *** units worth \$***, nevertheless reported that it had purchased subject imports in lieu of the domestic like product since 2005 due to price.¹⁶¹

*** denied lost sales allegations involving *** units and \$***, stating that its purchasing decisions were predicated on many factors other than price.¹⁶² We note, however, that the delivered purchase prices paid by *** for subject imports were *** to *** percent *** its delivered purchase prices for comparable domestic TBLGs.¹⁶³ *** itself emphasized the importance of price to its purchasing decisions ***.¹⁶⁴ Given this evidence and other record evidence on the importance of price to purchasing decisions, we find that ***.

For the foregoing reasons, we find that subject import underselling was significant and contributed significantly to the *** percentage point shift in market share from the domestic industry to subject imports between 2006 and 2008.

D. Impact of the Subject Imports¹⁶⁵

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a

¹⁵⁷ (...continued)

2008 than in the first quarter of 2006. *Id.* at Table V-2.

¹⁵⁸ See CR/PR at Figures V-3-9.

¹⁵⁹ See CR/PR at Table VI-1. We recognize that the increase in the domestic industry's ratio of COGS to the value of net sales from *** percent in 2007 to *** percent in 2008 was due in part to the industry's purported inability to increase its prices sufficiently to cover its increased costs. CR/PR at Tables C-6, 10. The domestic industry tellingly was able to realize significantly higher prices on its U.S. shipments of TBLGs in January-March 2009 than in January-March 2008, after Commerce's imposition of provisional measures, resulting in a lower industry ratio of COGS to net sales in interim 2009, *** percent, compared to interim 2008, *** percent. CR/PR at Tables C-6, 10 (the average unit value of domestic industry U.S. shipments increased from \$*** in the first quarter of 2008 to \$*** in the first quarter of 2009).

¹⁶⁰ CR/PR at Table IV-6.

¹⁶¹ CR at V-25-26, 28; PR at V-7-8; CR/PR at Table V-10. There were no confirmed lost revenue allegations. See CR/PR at Table V-11.

¹⁶² CR at V-26; PR at V-7.

¹⁶³ See CR/PR at Tables F-1-5.

¹⁶⁴ See CR at V-26; PR at V-7; Agri-Fab Prehearing Br. at Exhibit 2 (***). *** Agri-Fab Posthearing Br. at 3.

¹⁶⁵ We have considered the magnitude of the dumping margins found by Commerce. In its final determinations, Commerce found a weighted-average dumping margin of 386.28 percent for Jiasham Superpower Tools Co. and Princeway Furniture (Dong Guan) Co., Ltd., 154.72 percent for Nantong D & B Machinery Co. Ltd. and Qingdao Huatian Truck Co., Ltd., and a PRC-wide entity rate of 386.28 percent. CR/PR at Table I-2.

bearing on the state of the industry.”¹⁶⁶ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹⁶⁷

We find that subject imports had a significant adverse impact on the domestic industry between 2006 and 2008. As addressed above, U.S. commercial shipments of subject imports increased *** percent between 2006 and 2008, by volume, as subject imports captured *** percentage points of market share from domestic producers.¹⁶⁸ This massive shift in market share from the domestic industry to subject imports was driven, in large part, by pervasive subject import underselling. Consequently, the domestic industry experienced declines in almost every statutory performance indicator during the period.

As the domestic industry’s market share declined, so too did its U.S. shipments and net sales quantity. The domestic industry’s share of apparent U.S. consumption by quantity declined from *** percent in 2006 to *** percent in 2007 and *** percent in 2008.¹⁶⁹ 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 2008.¹⁷⁰ The domestic industry’s net sales quantity declined *** percent between 2006 and 2008, from *** units in 2006 to *** units in 2007 and *** units in 2008.¹⁷¹

Because the domestic industry’s production declined while its capacity remained relatively stable, the industry’s capacity utilization rate declined *** over the period of investigation. Specifically, capacity declined *** percent between 2006 and 2008, from *** units in 2006 to *** units in 2007 and *** units in 2008,¹⁷² while production declined *** percent, from *** units in 2006 to *** units in 2007 and *** units in 2008.¹⁷³ As a result, capacity utilization declined from *** percent in 2006 to *** percent in 2007 and *** percent in 2008.¹⁷⁴ The domestic industry’s average number of production workers declined *** percent between 2006 and 2008, from *** to ***, while wages paid declined *** percent, from \$*** to \$***.¹⁷⁵ The industry’s labor productivity fluctuated over the period, declining from *** units per thousand hours in 2006 to *** units per thousand hours in 2007 before increasing to *** units per thousand in 2008, ***.¹⁷⁶

Domestic industry end-of-period inventories *** between 2007 and 2008 as net sales quantity declined at a *** faster rate than production. Between 2006 and 2007, the industry’s net sales declined by *** percent but its production declined by *** percent, reducing end-of-period inventories from ***

¹⁶⁶ 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.”)

¹⁶⁷ 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 (Prelim.), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

¹⁶⁸ CR/PR at Table IV-6.

¹⁶⁹ CR/PR at Table IV-6.

¹⁷⁰ CR/PR at Tables C-6, 10.

¹⁷¹ CR/PR at Tables C-6, 10.

¹⁷² CR/PR at Tables C-6, 10.

¹⁷³ CR/PR at Tables C-6, 10.

¹⁷⁴ CR/PR at Tables C-6, 10.

¹⁷⁵ CR/PR at Tables C-6, 10.

¹⁷⁶ CR/PR at Tables C-6, 10.

units, equivalent to *** percent of total sales, to *** units, equivalent to *** percent of total sales.¹⁷⁷ Between 2007 and 2008, however, the industry's *** percent decline in net sales far exceeded its *** percent decline in production, *** its end-of-period inventories to *** units in 2008, equivalent to *** percent of total sales that year.¹⁷⁸ Because domestic producers reduced these *** inventories in the first quarter of 2009, the industry's production was *** percent lower in that quarter than in the first quarter of 2008, even though its U.S. shipments were *** percent higher.¹⁷⁹

The domestic industry's financial performance also deteriorated between 2006 and 2008. The industry's net sales value declined *** percent over the period, from \$*** in 2006 to \$*** in 2007 and \$*** in 2008.¹⁸⁰ Its operating income increased from \$*** (or *** percent of sales) in 2006 to \$*** (or *** percent of sales) in 2007, before declining *** to a loss of \$*** (or *** percent of sales) in 2008.¹⁸¹ Its return on investment followed a similar trend, increasing from *** percent in 2006 to *** percent in 2007 before declining to *** percent in 2008.¹⁸² Nevertheless, domestic industry capital expenditures increased *** percent between 2006 and 2008, and R&D expenditures ranged from \$*** to \$*** during the period, largely due to Agri-Fab's efforts to *** and develop new products in the face of intensifying Chinese competition.¹⁸³

We recognize that the domestic industry's financial condition improved in the first quarter of 2009 relative to the first quarter of 2008.¹⁸⁴ The domestic industry's improved profitability coincided with a *** percentage point gain in domestic industry market share in January-March 2009 relative to January-March 2008, as Commerce imposed provisional measures and subject imports relinquished *** percentage points of market share during the same period.¹⁸⁵ As stated above, we place reduced weight on data for the first quarter of 2009 because it accounts for a single quarter and the changes reflected in these data are related to the pendency of the investigations.

Based on all the foregoing trends, we find that there is a causal nexus between subject imports and the deteriorating condition of the domestic industry. This conclusion is based on the substantial increase in subject import volume and market share, driven by pervasive subject import underselling, which had a significant adverse impact on the domestic industry between 2006 and 2008. The domestic industry suffered declining production and sales volume as it lost *** percentage points of market share to subject imports over the period, significantly reducing the industry's rate of capacity utilization, employment, revenues, and operating income.¹⁸⁶

We have considered whether there are other factors that have had an impact on the domestic

¹⁷⁷ CR/PR at Tables C-6, 10.

¹⁷⁸ CR/PR at Tables C-6, 10.

¹⁷⁹ CR/PR at Tables C-6, 10 (domestic industry net sales were *** percent lower in the first quarter of 2009 as compared to the first quarter of 2008).

¹⁸⁰ CR/PR at Tables C-6, 10.

¹⁸¹ CR/PR at Tables C-6, 10.

¹⁸² CR/PR at Table VI-5.

¹⁸³ CR/PR at Table VI-4; CR at VI-9-10; PR at VI-2; see also Agri-Fab Responses to Commissioner Questions at A-6.

¹⁸⁴ See CR/PR at Tables I-1-2. The domestic industry earned operating income of \$***, equivalent to *** percent of net sales, in the first quarter of 2009; this was an increase from operating income of \$***, equivalent to *** percent of net sales, in the first quarter of 2008. Id. at Tables C-6, 10.

¹⁸⁵ CR/PR at Tables C-6, 10.

¹⁸⁶ See CR/PR at Tables C-6, 10.

industry.¹⁸⁷ Although the economic downturn may have had a role in the domestic industry's lagging performance in 2008, we find that the modest decline in demand that year does not explain the magnitude of the deterioration in the domestic industry's performance. The *** percent decline in apparent U.S. consumption between 2007 and 2008 did not prevent U.S. commercial shipments of subject imports from increasing *** percent, as subject imports gained *** percentage points of market share at the domestic industry's expense.¹⁸⁸ Consequently, in 2008, the domestic industry bore the full brunt of the decline in apparent U.S. consumption, equivalent to ***, and suffered from a significant loss of market share to subject imports, equivalent to ***.¹⁸⁹ Furthermore, the industry's significantly reduced sales volume in 2008 came on top of its significantly reduced sales volume in 2007, when subject imports captured not only the *** percent increase in apparent U.S. consumption over 2006 levels, but also took *** percentage points of market share from the domestic industry.¹⁹⁰ Between 2006 and 2008, the *** percent decline in apparent U.S. consumption would have reduced the domestic industry's commercial shipments by at most *** units, while the industry's loss of *** percentage points of market share to subject imports represented a reduction in the industry's commercial shipments of *** units.¹⁹¹ We find that the economic downturn in 2008 does not sever the causal link between subject imports and the injury suffered by the domestic industry, and we do not attribute to subject imports the effects of any adverse demand conditions.

We also recognize that nonsubject imports were a factor in the U.S. market during the period examined.¹⁹² Although the record indicates that there is a high degree of substitutability among

¹⁸⁷ For the reasons given in our preliminary determinations, we remain unpersuaded by Superpower's argument that the domestic industry's declining performance resulted entirely from factors unrelated to imports, such as the aging population, climate change, zero-turn mowers, or mulching mowers. See USITC Pub. 4028 at 24; Confidential Preliminary Views at 34-35. Superpower's contention that these factors have contributed to a secular decline in TBLG demand conflicts with the trend in apparent U.S. consumption, which increased *** percent between 2006 and 2007 and declined *** percent between 2007 and 2008 due to the economic downturn. See CR/PR at Table VI-6. As addressed above, Superpower's argument that Lowe's switched from domestic TBLGs to subject imports purely for non-price reasons, as part of a "branding" strategy, conflicts with evidence that price played a central role in *** purchasing decisions. See CR/PR at Tables F-1-5 (the delivered purchase prices for subject imports paid by *** were *** to *** percent lower than its delivered purchase prices for comparable domestic TBLGs); Agri-Fab Prehearing Br. at Exhibit 2. We also reject Superpower's argument that the Commission should exclude purchases by *** of subject imports from its analysis of subject import volume because such purchases were made for non-price reasons. See Superpower's Prehearing Br. at 20-22. The Commission must consider all imports within the scope of the investigations, see 19 U.S.C. § 1677(7)(B), and we are unconvinced that purchases by *** of subject imports had nothing to do with price.

¹⁸⁸ CR/PR at Table IV-6.

¹⁸⁹ CR/PR at Tables C-6, 10.

¹⁹⁰ CR/PR at Tables C-6, 10.

¹⁹¹ CR/PR at Tables C-6, 10.

¹⁹² With respect to the analysis required by the Federal Circuit in Bratsk and Mittal, Commissioner Pinkert notes that, within each individual product type, TBLGs are highly substitutable regardless of the source, CR/PR at Table II-14, and may therefore constitute a commodity product. Although the evidence is mixed with respect to whether price-competitive non-subject imports were a significant factor in the U.S. market during the period of investigation, he finds that non-subject imports would not have replaced subject imports without any beneficial effect on the domestic industry. The only known importer from Mexico is ***, which would have no incentive to sell imports from Mexico at prices or volumes that would be injurious to its own domestic operations. CR at VII-8; PR at VII-4. In addition, the imports from Mexico consist of ***, and the available information indicates that the Mexican producer does not have the capability of producing other types of TBLGs, Agri-Fab Responses to Commissioner

(continued...)

nonsubject imports, subject imports, and the domestic like product of the same type of TBLG,¹⁹³ nonsubject imports were limited to a single type of TBLG: ***.¹⁹⁴ The only domestic product with which the imported nonsubject *** competed was reportedly a single spreader model produced by ***.¹⁹⁵ Moreover, ***.¹⁹⁶ Nonsubject imports also declined between 2006 and 2008 in terms of both volume and market share.¹⁹⁷ We have not attributed to subject imports any effects from nonsubject imports.

Consequently, we conclude that there is a causal nexus between the subject imports and an adverse impact on the domestic industry, which demonstrates that the domestic industry is materially injured by reason of subject imports.

CONCLUSION

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

¹⁹² (...continued)

Questions at A-34, thus making it exceedingly unlikely that imports from Mexico either could or would have replaced subject imports during the period of investigation.

¹⁹³ One domestic producer reported that nonsubject imports are always interchangeable with the domestic like product and frequently interchangeable with subject imports. CR/PR at Table II-4. All purchasers reported that nonsubject imports are always (5 of 6 responding purchasers) or frequently (1 of 6 responding purchasers) interchangeable with the domestic like product. *Id.* Similarly, all purchasers reported that nonsubject imports are always (4 of 5 responding purchasers) or frequently (1 of 5 responding purchasers) interchangeable with subject imports. *Id.* No responding importer responded to the question regarding interchangeability. *Id.* In addition, no questionnaire respondent responded to the question asking whether differences other than price are ever significant as between nonsubject imports and either the domestic like product or subject imports. *Id.* at Table II-5. According to ***, *** similar to *** were imported from China during the period of investigation, and no domestic producer but *** produced *** during the period. *See* Agri-Fab Prehearing Br. at 46; Agri-Fab Responses to Commissioner Questions at A-10, Exhibit 8.

¹⁹⁴ CR at VII-8; PR at VII-4. The sole Mexican producer of TBLGs reportedly ***. Agri-Fab Responses to Commissioner Questions at A-34. ***. Agri-Fab Responses to Commissioner Questions at A-34. The Mexican producer also was *** from significantly increasing its exports to the United States between 2006 and 2008, with excess capacity of *** units in 2006, *** units in 2007, and *** units in 2008. CR/PR at Table VII-5. Mexican excess capacity as a share of apparent U.S. consumption was *** percent in 2006, *** percent in 2007, and *** percent in 2008. *Id.* at Tables IV-6, VII-5.

¹⁹⁵ *See* Agri-Fab Posthearing Br. at 12 & n. 34.

¹⁹⁶ CR at VII-8; PR at VII-4.

¹⁹⁷ U.S. commercial shipments of nonsubject imports declined *** percent over the period, from *** units in 2006, or *** percent of apparent U.S. consumption, to *** units in 2007, or *** percent of apparent U.S. consumption, and *** units in 2008, or *** percent of apparent U.S. consumption. CR/PR at Table IV-6. We note that nonsubject import volume declined over the period of investigation notwithstanding the relatively low average unit value of nonsubject import shipments. The average unit value of U.S. commercial shipments of nonsubject imports was \$*** in 2006, \$*** in 2007, and \$*** in 2008. *Id.* at Tables C-6, 10. By comparison, the average unit value of U.S. commercial shipments of subject imports was \$*** in 2006, \$*** in 2007, and \$*** in 2008, while the average unit value of the domestic industry's U.S. commercial shipments was \$*** in 2006, \$*** in 2007, and \$*** in 2008. *Id.* We cite these data only as evidence of the low overall price level of nonsubject imports and recognize that these AUV comparisons reflect differences in product mix.

ADDITIONAL AND DISSENTING VIEWS OF VICE CHAIRMAN DANIEL R. PEARSON

Based on the record in these investigations, I determine that an industry in the United States is threatened with material injury by reason of imports of certain tow-behind lawn groomers and parts thereof (“TBLGs”) from China that the Department of Commerce (“Commerce”) has found are subsidized and sold in the United States at less than fair value (“LTFV”). I join sections I, II, III, IV-A, and IV-B of the Views of the Commission concerning background, domestic like product and industry, conditions of competition, and the legal standard concerning material injury.

A. Legal Standard for Threat of Material Injury

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.”¹ 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.² In making my determinations, I consider all statutory threat factors that are relevant to these investigations.³

¹ 19 U.S.C. § 1677(7)(F)(ii).

² 19 U.S.C. § 1677(7)(F)(ii).

³ 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 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;

(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). This investigation does not involve an agricultural product, so statutory threat factor
(continued...)

B. Likely Volume of the Subject Imports

As discussed in the views of the majority, the volume of subject imports increased significantly over the period examined. The volume of subject imports increased strongly and steadily from *** units in 2006 to *** units in 2007, and then to *** units in 2008.⁴ In 2007, subject imports captured substantial market share from both the domestic industry and nonsubject imports as nonsubject imports' market share declined.⁵ By contrast, in 2008, gains by subject imports were at the exclusive expense of the domestic industry.⁶ Thus, the domestic industry's overall loss of market share to subject imports was due in large part to the rapid increase in subject imports.

The increase in subject imports occurred not only when demand in the U.S. market was increasing from 2006 to 2007, but also after demand declined from 2007 to 2008.⁷ That subject import volumes increased during both periods indicates that the increases did not simply track trends in consumption in the U.S. market. It was only after the petitions were filed that subject import volume began to decline, and I concur with the majority's views that the decline in subject imports was due to the pendency of the investigations. Hence, I find that the rate of increase in volume of the subject imports during the period examined indicates that increased volumes of subject imports are likely in the absence of import relief.

With regard to production capacity for TBLGs in China, as an initial matter I note that the Commission does not have anywhere near comprehensive information concerning the Chinese industry. The domestic interested parties identified *** TBLGs producers in China. Only *** of these producers, however, responded to the Commission questionnaire, and they estimated that they comprised no more than *** percent of Chinese production and exports to the United States.⁸ Based on data from these firms, reported Chinese production capacity rose only slightly during the period examined, and is not expected to change much in 2009 and 2010.⁹ These firms, however, reported ample excess capacity; in 2008, they operated at a capacity utilization rate of only *** percent, or approximately *** units.¹⁰ Assuming that other non-responding Chinese firms have similar amounts of excess capacity, and taking the responding firms' estimate of their share in total production at face value, as of the end of 2008 there

³ (...continued)
(VII) is not implicated.

⁴ CR/PR at Table IV-3. During the first three months of 2009, subject imports were *** units compared with *** units during the same period in 2008. Id.

⁵ The market share of subject imports increased from *** percent in 2006 to *** percent in 2007. From 2006 to 2007, the market share of domestic producers declined from *** percent to *** percent, while the market share of nonsubject imports fell from *** percent to *** percent. CR/PR at Table C-10.

⁶ The market share of subject imports increased from *** percent in 2007 to *** percent in 2008. From 2007 to 2008, the market share of domestic producers declined from *** percent to *** percent, while the market share of nonsubject imports increased very slightly from *** percent to *** percent. CR/PR at Table C-10.

⁷ Demand for TBLGs, as measured by apparent U.S. consumption, first increased slightly from *** units in 2006 to *** units in 2007, before declining more markedly to *** units in 2008. CR/PR at Table C-10.

⁸ CR at VII-3; PR at VII-3.

⁹ Reported capacity in China increased from *** units in 2006 to *** units in 2007, and remained unchanged in 2008. Reported capacity is expected to decline slightly, to *** units in 2009, and remain at that level in 2010. CR/PR at Table VII-1.

¹⁰ CR/PR at Table VII-1.

was approximately *** units of excess capacity in China, which is over *** percent of apparent U.S. consumption in that year, a level I find to be significant.¹¹

Moreover, to the extent the excess capacity would be utilized, much of the new production will be devoted to export markets as the Chinese producers have become increasingly export-oriented.¹² Indeed, by 2008 the home market for Chinese production of TBLGs had disappeared.¹³ Further, a substantial share of exports are likely to be directed to the U.S. market. Reporting Chinese producers of TBLGs directed at least two-thirds of their shipments to the U.S. market during the period examined.¹⁴ I find that the substantial excess capacity in the Chinese industry and its consistent focus on the U.S. market during the period examined indicate the likelihood of increased subject imports in the absence of import relief.

C. Likely Underselling and Price Effects of the Subject Imports

I evaluate the likely underselling and price effects in light of key conditions of competition in the U.S. market. First, I note that, although price was ranked as a very important factor by a majority of purchasers, other factors, such as availability, product consistency, overall product quality, and supply reliability, were ranked more frequently as very important factors.¹⁵ That said, a majority of purchasers considered the subject imports to be “always” interchangeable with the domestic product.¹⁶ This suggests that, once made to industry standards, the subject imports and the domestic product are highly substitutable and, therefore, price is an important factor in purchasing decisions. Second, as measured by apparent U.S. consumption, demand for TBLGs increased, but only slightly, from 2006 to 2007, before declining, by *** percent, from 2007 to 2008.¹⁷

I concur with my colleagues’ views that subject imports undersold domestic TBLGs to a significant degree during the period by large and consistent margins, and that, notwithstanding this underselling, prices for the domestic like product were not depressed during the period examined. I do not, however, concur with their view that the subject imports prevented price increases for the domestic product that otherwise would have occurred during the period examined.¹⁸

In examining whether the domestic industry’s prices were suppressed by subject import competition, I examine two factors. First, a rising ratio of the cost of goods sold to the value of net sales suggests that the industry was unable to raise prices sufficiently in order to keep up with rising costs. In these investigations, this ratio declined from *** percent in 2006 to *** percent in 2007, and then rose to

¹¹ CR/PR at Table C-10. Apparent U.S. consumption in 2008 was *** units.

¹² The share of exports in total shipments by reporting Chinese producers first declined very slightly from *** percent in 2006 to *** percent in 2007, and then increased to *** percent in 2008. CR/PR at Table VII-1.

¹³ Home market shipments by responding firms, which had accounted for *** percent of total shipments in 2007, declined to *** percent in 2008. CR/PR at Table VII-1.

¹⁴ The share of responding Chinese producers’ shipments exported to the United States was *** percent in 2006, *** percent in 2007, and *** percent in 2008. CR/PR at Table VII-1.

¹⁵ CR/PR at Table II-3.

¹⁶ Nine of 13 responding purchasers viewed the subject imports as “always” interchangeable with the domestic like product, and three viewed them as “frequently” interchangeable. CR/PR at table II-4.

¹⁷ Apparent U.S. consumption first increased slightly from *** units in 2006 to *** units in 2007, and then declined to *** units in 2008. CR/PR at Table C-10.

¹⁸ As discussed *infra*, however, I find that 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.

*** percent in 2008, for an overall decline over the 3-year period of *** percentage points.¹⁹ Thus, we do not see sufficient evidence of an increasing COGS-to-sales ratio. Second, more direct evidence of price suppression can be furnished by confirmed lost revenue allegations, which would indicate that domestic firms had to lower their prices in order to retain business. In these investigations, however, only two customers were subject to allegations, and none of these allegations was confirmed.²⁰

Therefore, because the record does not contain sufficient evidence of either price depression or price suppression, I cannot conclude that subject imports had a significant adverse effect on domestic prices during the period examined. Nonetheless, given my finding *supra* that the substantial excess capacity in the Chinese industry and its consistent focus on the U.S. market during the period examined indicate the likelihood of increased subject imports in the absence of import relief, and in light of consistent underselling, I determine that 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. Even though demand for TBLGs is declining, I find that it is likely that, given the fact that Chinese TBLGs are consistently priced below the domestic like product, and given the importance of price in purchasing decisions, those purchasers that are in the market for TBLGs would likely purchase the imported product. This purchasing pattern would likely result in either price depression or suppression.

D. Vulnerability and Likely Impact

The domestic industry experienced very few positive changes over the period examined as it participated in a market characterized by an overall decline in demand. Indeed, most volume-based indicators declined significantly. From 2006 to 2008, the domestic industry saw capacity fall by 1.3 percent, production by 19.4 percent, and capacity utilization by 13.0 percentage points. The volume of U.S. shipments decreased by 31.0 percent and net sales values decreased by 30.5 percent.²¹ The fact that shipments declined faster than production toward the end of the period likely reflects the impact of declining demand.

Price-based indicators, however, demonstrate different trends. As subject imports increased rapidly between 2006 and 2008, the unit value of U.S. shipments first rose, then declined, for an overall increase of 3.0 percent.²² The industry's profitability, measured by the ratio of operating income to sales, actually improved a bit in 2007 over its 2006 level, despite the presence of subject imports.²³

Consequently, in this industry there appears to be a strong correlation between production volume and profitability, suggesting that the negative impact on the industry's profitability is coming from losses in volume rather than declining prices. In the current market environment facing this industry, however, it is difficult to conclude that it was the presence of subject imports, rather than declining demand for the

¹⁹ CR/PR at Table C-10.

²⁰ CR/PR at Table V-11.

²¹ The capacity of the domestic TBLG industry was *** units in 2006, *** units in 2007, and *** units in 2008. Production was *** units in 2006, *** units in 2007, and *** units in 2008. Capacity utilization fell from *** percent in 2006 to *** percent in 2007, and then to *** percent in 2008. The volume of U.S. shipments dropped steadily from *** units in 2006 to *** units in 2007, and then to *** units in 2008. The value of net sales first declined from \$*** in 2006 to \$*** in 2007, and then declined further to \$*** in 2008. CR/PR at Table C-10.

²² The unit value of U.S. shipments first rose from \$*** in 2006 to \$*** in 2007, then declined to \$*** in 2008. CR/PR at Table C-10.

²³ The ratio of operating income to sales was *** percent in 2006, and rose to *** percent in 2007, before falling *** percent in 2008. CR/PR at Table C-10.

product, that caused the industry's volume losses. This conclusion is made even more problematic by the fact that the record does not contain a significant number of confirmed lost sales or lost revenue allegations.²⁴

Accordingly, I find that the impact of subject imports on the operations of the TBLG industry was not significant during the period examined. Nonetheless, while the domestic industry has not yet experienced material injury by reason of subject imports, the market conditions that allowed the domestic industry to avoid such injury have deteriorated. While steady to slightly increasing demand from 2006 to 2007 mitigated the impact of subject imports, demand declined in 2008 and has fallen even faster in early 2009, compared to the corresponding period of 2008.²⁵ Indeed, the domestic industry faces a much different environment in 2009 and 2010 than it did at the beginning of the period examined, when it first began facing competition from subject imports. As detailed in the majority views, demand for TBLGs has recently fallen dramatically due to the weakening housing market.²⁶ Further evidence of the industry's vulnerability is found in the fact that inventories of Chinese product held in the United States increased steadily over the period examined, peaking in 2008, and were significant in relation to preceding-period U.S. shipments throughout the period, particularly so in the most recent period, January-March 2009.²⁷ Hence, based on my consideration of the record and the recent developments in the marketplace in particular, I find that the domestic industry is vulnerable to material injury from likely increased volumes of subject imports.

Because of worsening demand conditions, the domestic industry is no longer shielded from the impact of subject imports, which are likely to increase significantly in volume and continue to undersell significantly the domestic like product in the absence of import relief. The domestic industry would likely experience significantly reduced profitability due to significantly depressed or suppressed prices as well as reduced production, shipments and market share.

I also find that subject imports will have negative effects on the development and production efforts of the domestic industry. From 2006 to 2007, steady to slowly rising demand mitigated the impact of subject imports, and allowed the domestic industry to increase its profits even as it lost significant market share. This trend did not continue in the following year, however, as demand sagged, subject imports continued to increase, and the domestic industry experienced declining financial performance. As subject imports continue to increase in the imminent future in the absence of import relief, the domestic industry will lose not only market share, but sales volumes as well. Given the clear link between production volumes and profitability, if volumes fall further the domestic industry will experience declining operating income margins, and will experience declines in employment, returns on assets, and in its ability to maintain and upgrade production facilities.

In considering whether the domestic industry is threatened with material injury by reason of subject imports, I have also considered the extent to which other factors are likely to contribute to injury

²⁴ With regard to lost sales, *** alleged a total of approximately \$*** million of lost sales. Total confirmed lost sales allegations amounted to approximately \$***, or *** percent, of the total amount alleged. CR/PR at table V-10; CR at V-26, n.12, PR at V-7, n.12. Similarly, for lost revenues, as noted above, no lost revenue allegations were confirmed.

²⁵ Apparent U.S. consumption first increased slightly from *** units in 2006 to *** units in 2007, and then declined to *** units in 2008. Consumption in January-March 2009 was *** units, compared to *** units in January-March 2008. CR/PR at Table C-10.

²⁶ CR at II-7-II-8, PR at II-4-II-5.

²⁷ CR/PR at table VII-3. Inventories of imports from China held by U.S. importers increased from *** units in 2006 to *** units in 2008. Such imports declined as a ratio to preceding-period U.S. shipments of imports from *** percent in 2006 to *** percent in 2008. That ratio, however, was *** percent in January-March 2009 compared with *** percent in January-March 2008.

to ensure that I do not attribute injury from other factors to subject imports. As discussed above, I find that reduced demand for TBLGs is likely to render the industry more vulnerable to the effects of imports. Even so, I do not find that the likely imminent material injury to the domestic industry described above can be attributed in any significant way to the effects of weak demand or nonsubject imports. First, in interim 2009, the industry's fortunes actually improved despite rapidly weakening demand, once subject imports left the market.²⁸ Second, I concur with my colleagues that nonsubject imports are not a significant factor in the TBLG market, inasmuch as during the period examined they were limited to a single spreader model imported from Mexico by petitioner Agri-Fab and their volumes declined in both absolute volume and market share.²⁹ Thus, there is no indication that, in the imminent future, nonsubject imports would capture market share from the domestic industry to the same extent as subject imports. Therefore, I do not find that these other factors would lead to material injury to the domestic industry in the absence of subject imports.³⁰

Considering the statutory threat factors and the record as a whole, I determine that further subsidized and LTFV imports of TBLGs from China are imminent and that material injury by reason of subject imports would occur unless an order is issued. Accordingly, I determine that the domestic industry producing TBLGs is threatened with material injury by reason of subject imports from China.

CONCLUSION

For the reasons stated above, I find that an industry in the United States is threatened with material injury by reason of imports of TBLGs from China that have been found by Commerce to be subsidized by the Government of China and sold at less than fair value.

²⁸ Demand for TBLGs, as measured by apparent U.S. consumption, was *** units in January-March 2009, compared with *** units in January-March 2008. Industry profitability, as measured by the ratio of operating income to net sales, was *** percent in January-March 2009, compared with *** percent in January-March 2008. CR/PR at Table C-10.

²⁹ U.S. shipments of imports from Mexico declined from *** units in 2006 to *** units in 2007, and then declined again, to *** units, in 2008. Their market share declined from *** percent in 2006 to *** percent in 2007, and then increased very slightly to *** percent in 2008, for an overall decline of *** percentage points. CR/PR at Table C-10.

³⁰ I further determine, pursuant to 19 U.S.C. §1671d(b)(4)(B) and 19 U.S.C. §1673d(b)(4)(B), that I would not have made a material injury determination but for Commerce's suspension of liquidation of subject imports on November 24, 2008. The period examined, and thus the comprehensive record evidence available, in these investigations was through March 31, 2009, which was approximately four months subsequent to the date on which liquidation was suspended. While the record evidence demonstrates that the domestic industry is vulnerable to material injury by reason of subject imports. I do not find that but for the suspension of liquidation the domestic industry's condition would have worsened in this period to a level reflecting material injury. I note, however, that I join my colleagues in finding, pursuant to 19 U.S.C. § 1677(7)(I), that the reductions in the volume of subject imports, increases in prices for the domestic like product, and improvements in the domestic industry's performance during interim 2009 (as compared to interim 2008) are related to the filing of the petitions in June 2008 and, hence, I have accorded less weight to the 2009 data in my analysis.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed by Agri-Fab, Inc. (“Agri-Fab or “petitioner”), Sullivan, IL, on certain tow-behind lawn groomers (“TBLGs”) and parts thereof¹ from China alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (“LTFV”) imports of TBLGs from China and by reason of imports of subsidized TBLGs from China. Information relating to the background of the investigations is provided below.²

| Effective date | Action |
|-------------------|---|
| June 24, 2008 | Petition filed with Commerce and the Commission; institution of Commission investigations |
| July 21, 2008 | Commerce’s notice of initiation |
| August 8, 2008 | Commission’s preliminary determination |
| November 24, 2008 | Commerce’s preliminary CVD determination and alignment of final countervailing duty determination with final antidumping duty determination |
| January 28, 2009 | Commerce’s preliminary AD determination and postponement of final determination |
| March 13, 2009 | Scheduling of final phase of Commission's investigation (74 FR 10964) |
| June 19, 2009 | Commerce’s final CVD and AD determinations (74 FR 29180 and 74 FR 29167, respectively) |
| June 16, 2009 | Commission’s hearing ¹ |
| July 15, 2009 | Scheduled date for the Commission’s vote |
| July 27, 2009 | Commission’s determination due to Commerce |

¹A list of witnesses appearing at the Commission’s hearing is presented in App. B.

¹ A complete description of the imported products subject to these investigations is presented in the “Subject Merchandise” section of this part of the report.

² *Federal Register* notices cited in this tabulation are presented in app. A of this report.

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, dumping margins and subsidies, 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

TBLGs are used to maintain a healthy lawn. Trade in the U.S. market for TBLGs totaled \$*** million or *** thousand units during 2008, of which *** percent was accounted for by sales of U.S.-produced TBLGs by value and *** percent by quantity. In 2008, imports from the subject source accounted for *** percent of the U.S. market by value and *** percent by quantity. Imports from nonsubject sources accounted for *** percent of the U.S. market by value and *** percent by quantity. Five producers supplied the Commission with data on their U.S. TBLG operations. Nine firms reported that they imported TBLGs during the January 2006 to March 2009 period.

SUMMARY DATA

Table C-1 in appendix C presents a summary of data collected in these investigations. U.S. industry data are based on questionnaire responses from U.S. producers (see Part III of this report). U.S. import data are based on questionnaire responses from U.S. importers (see Part IV of this report). Information on the industries that produce TBLGs in China and Mexico is based on questionnaire responses from foreign producers and exporters (see Part VII of this report). Data from other sources are referenced and footnoted where appropriate. Table C-2 presents data collected concerning tow-behind aerators; table C-3 presents data concerning tow-behind dethatchers; table C-4 presents data concerning tow-behind spreaders; and table C-5 presents data concerning tow-behind sweepers.

PREVIOUS COMMISSION INVESTIGATIONS

There have been no previous import injury investigations on the merchandise subject to these investigations.

NATURE AND EXTENT OF SUBSIDIES AND SALES AT LTFV

Subsidies

On June 19, 2009, Commerce published a notice in the *Federal Register* of its final determination of net countervailing duty rates with respect to imports from China,³ as summarized in Table I-1.

³ *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180, June 19, 2009.

Table I-1**TBLGs: Commerce's final countervailing duty rates with respect to imports from China**

| Exporter/Manufacturer | Net Subsidy Rate (percent) |
|---|-----------------------------------|
| Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited | 0.56 (<i>de minimis</i>) |
| Jiashan Superpower Tools Co.,Ltd. | 13.3 |
| Maxchief Investments, Ltd. | 264.98 |
| Qingdao EA Huabang Instrument Co., Ltd. | 264.98 |
| Qingdao Hundai Tools Co., Ltd. | 264.98 |
| Qingdao Taifa Group Co., Ltd. | 264.98 |
| World Factory, Inc. | 264.98 |
| All Others | 13.3 |
| Source: Final determination, 74 FR 29180, June 19, 2009. | |

Sales at LTFV

On June 19, 2009, Commerce published a notice in the *Federal Register* of its final determinations of sales at LTFV with respect to imports from China,⁴ as summarized in Table I-2.

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

| Exporter & Producer | Final dumping margin (percent) |
|--|---------------------------------------|
| Jiashan Superpower Tools Co., Ltd. | 386.28 |
| Princeway Furniture (Dong Guan) Co., Ltd. | 386.28 |
| Nantong D & B Machinery Co., Ltd. | 154.72 |
| Qingdao Huatian Truck Co., Ltd. | 154.72 |
| PRC-wide Entity | 386.28 |
| Source: Final determination 74 FR 29167 June 19, 2009. | |

⁴ *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Determination of Sales at LTFV*, 74 FR 29167, June 19, 2009.

THE SUBJECT MERCHANDISE

Commerce's Scope

Commerce has defined the scope of these investigations as follows:

{These investigations cover} certain non-motorized tow behind lawn groomers ("lawn groomers"), manufactured from any material, and certain parts thereof. Lawn groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of these investigations, even if the lawn groomers designed to perform additional non-subject functions (e.g., mowing).

All lawn groomers are designed to incorporate a hitch, of any configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of these investigations. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the investigations. Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a "plug aerator"), a series of discs with protruding spikes (a "spike aerator"), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface. Dethatchers consist of a frame, as well as a series of tines designed to remove material (e.g., dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (i.e., a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media ("broadcast spreader"), a rotating agitator that allows the media to be released at a consistent rate ("drop spreader"), or any other configuration.

Lawn dethatchers with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the investigations. Other lawn groomers-sweepers, aerators, and spreaders-with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the investigations.

Also included in the scope of the investigations are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not

be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units—when imported with one or more lawn grooming modules—with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the investigations. Modular unit chasses, imported without a lawn grooming module and with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the investigations. When imported separately, modules that are designed to perform subject lawn grooming functions (i.e., sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

Lawn groomers, assembled or unassembled, are covered by these investigations. For purposes of these investigations, “unassembled lawn groomers” consist of either 1) all parts necessary to make a fully assembled lawn groomer, or 2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following “major components.”

- 1) an assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;*
- 2) a sweeper brush;*
- 3) an aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;*
- 4) a spreader hopper;*
- 5) a rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;*
- 6) dethatcher tines;*
- 7) aerator spikes, plugs, or other aerating component; or*
- 8) a hitch.*

The major components or parts of lawn groomers that are individually covered by these investigations under the term “certain parts thereof” are: (1) brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

The products for which relief is sought specifically exclude the following: 1) agricultural implements designed to work (e.g., churn, burrow, till, etc.) soil, such as cultivators, harrows, and plows; 2) lawn or farm carts and wagons that do not groom lawns; 3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; 4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; 5) “push” lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; 6) dethatchers with a net assembled

weight (i.e., without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers–sweepers, aerators, and spreaders–with a net fully–assembled weight (i.e., without packing, additional weights, or accessories) of more than 200 pounds; and 7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (e.g., “drum–style” spike aerators).

The lawn groomers that are the subject of these investigations are currently classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.80.0010, 8432.90.0030, 8432.90.0080, 8479.89.9896, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in these investigations.”

Tariff Treatment

Table I-3 presents the statistical reporting numbers of the Harmonized Tariff Schedule of the United States (HTS) under which TBLGs and parts thereof are imported. Essentially, tow-behind lawn spreaders are imported under subheading 8432.40.00, while the other three types of TBLGs are imported under subheading 8479.89.98 (statistical reporting number 8479.89.9896). Commerce identified other subheadings of the HTS under which TBLGs and their “major components” may be classified, including 8432.80.00 (statistical reporting number 8432.80.0010), 8432.90.00 (8432.90.0030 or 8432.90.0080), 8479.90.94 (8479.90.9496), and 9603.50.00.

**Table I-3
TBLGs: Statistical reporting numbers of the HTS, 2009**

| HTS provision | Article description ¹ | General ² | Special | Column 2 ⁴ |
|---------------|---|-------------------------------------|-------------------|-----------------------|
| | | Rates (<i>percent ad valorem</i>) | | |
| 8432.40.0000 | Agricultural, horticultural, or forestry machinery for soil preparation or cultivation: Manure spreaders and fertilizer distributors | Free | | Free |
| 8432.80.0010 | Agricultural, horticultural, or forestry machinery for soil preparation or cultivation: Other machinery (than of plows; harrows, scarifiers, cultivators, weeders and hoes; seeders, planters and transplanters; manure spreaders and fertilizer distributors) Tow behind spreaders, aerators, and dethatchers | Free | | Free |
| 8432.90.0030 | Agricultural, horticultural, or forestry machinery for soil preparation or cultivation: Parts: Of seeders, planters, transplanters, manure spreaders and fertilizer distributors | Free | | Free |
| 8432.90.0080 | Agricultural, horticultural, or forestry machinery for soil preparation or cultivation: Parts: Of other machinery (than of plows; harrows, scarifiers, cultivators, weeders and hoes; seeders, planters, transplanters, manure spreaders and fertilizer distributors) | Free | | Free |
| 8479.89.9896 | Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances (than of machinery for public works, building or the like; machinery for extraction or preparation of animal or fixed vegetable fats or oils; presses for the manufacture of particle board or fiber building board of wood or other ligneous materials and other machinery for treating wood or cork; rope or cable making machines; evaporative air coolers): Note.—Because of rounding, figures may not add to the totals shown. Other (than of for treating metal, including electric wire coil-winders; mixing, kneading, crushing, grinding, screening, sifting, homogenizing, emulsifying or stirring machines): Other (than of electromechanical appliances with self-contained electric motor; carpet sweepers; and machines for manufacturing optical media): Tow behind sweepers | 2.5 | Free ³ | 35.0 |

Table I-3 – Continued
TBLGs: Statistical reporting numbers of the HTS, 2009

| HTS provision | Article description | General ¹ | Special ² | Column 2 ³ |
|---------------|--|----------------------------|----------------------|-----------------------|
| | | Rates (percent ad valorem) | | |
| 8479.90.9496 | Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof: Parts: Other (than of articles of subheading 8479.89.10, air humidifiers or dehumidifiers, or 8479.89.70, carpet sweepers): Other (than of industrial robots): Other (than of machinery for public works, building, or the like; of presses for the manufacture of particle board or fiber building board of ligneous materials and other machinery for treating wood or cork; of machines or mechanical appliances for treating metal) | Free | | 35.0 |
| 9603.50.0000 | Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Other brushes constituting parts of machines, appliances or vehicles (than of brooms and brushes, consisting of twigs or other vegetable materials bound together, with or without handles; toothbrushes, shaving brushes, air brushes, nail brushes, eyelash brushes and other brushes of use on the person, including such brushes constituting parts of appliances; artists' brushes, writing brushes and similar brushes for the application of cosmetics; paint, distemper, varnish or similar brushes, paint pads and rollers) | Free | | 35.0 |

¹ An abridged description is provided for convenience. However, an unabridged description is available from the respective headings, subheadings, and legal notes of the 2009 Harmonized Tariff Schedule.

² Normal trade relations rate applicable to imports from China.

³ For eligible goods of beneficiary or partner countries: Generalized System of Preferences, U.S.-Australia Free Trade Agreement, Automotive Products Trade Act, U.S.-Bahrain Free Trade Agreement, Agreement on Trade in Civil Aircraft, North American Free Trade Agreement with Canada and Mexico, U.S.-Chile Free Trade Agreement, Caribbean Basin Economic Recovery Act, Israel Free Trade Area, Andean Trade Preference Act, Jordan Free Trade Area, U.S.-Dominican Republic-Central America Free Trade Agreement, U.S.-Morocco Free Trade Agreement, U.S.-Oman Free Trade Agreement, and U.S.-Singapore Free Trade Agreement.

⁴ Applies to imports from a small number of countries that do not enjoy normal or preferential trade relations duty status.

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

THE DOMESTIC LIKE PRODUCT

The Commission's decision regarding the appropriate domestic products that are "like" the subject imported product is based on a number of factors, including (1) physical characteristics and uses; (2) common manufacturing facilities, production processes, and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price. Information regarding these factors are discussed below.

For the purposes of its determinations in the preliminary phase of these investigations, the Commission found "a single domestic like product consisting of all TBLGs, coextensive with the scope of the investigations,"^{5 6} as urged by petitioner. In finding a single domestic like product, the Commission commented:

"We note that the question of whether to define a single domestic like product, or multiple domestic like products, is a close one, and we intend to explore this issue further in any final phase of these investigations. In particular, we intend to examine further the customer and producer perceptions of the four types of TBLGs."⁷

⁵ In so doing, the Commission additionally stated:

"We also define the domestic like product to include TBLG parts within the scope of the investigations, based on our semi-finished products analysis. See, e.g., Glycine from India, Japan, and Korea, Inv. Nos. 731-TA-1111-1113 (Preliminary), USITC Pub. 3921 (May 2007) at 7. Pursuant to that analysis, we examine 1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; 2) whether there are perceived to be separate markets for the upstream and downstream article; 3) differences in the physical characteristics and functions of the upstream and downstream articles; 4) differences in the costs or value of the vertically differentiated articles, and 5) the significance and extent of the processes used to transform the upstream article into the downstream article. See id. According to Agri-Fab, the TBLG parts within the scope are dedicated to the production of TBLGs and essential to their operation; are not sold on the merchant market; possess similar physical characteristics and functions as TBLGs insofar as they are incorporated into TBLGs; represent a significant proportion of the cost of producing TBLGs; and are transformed into TBLGs through simple assembly operations. See Petition at 23-24. The record contains no evidence to the contrary, and no party has argued that the Commission should define TBLG parts as a separate like product. Accordingly, for purposes of the preliminary phase of these investigations, we define the domestic like product to include TBLG parts."

Certain Tow-Behind Lawn Groomers and Parts Thereof from China, Investigation Nos. 701-TA-457 and 731-TA-1153 (Preliminary), USITC Publication 4028, August 2008, p. 10 and n. 72.

⁶ In the preliminary phase of these investigations, the respondent counsel for Superpower argued that the Commission should find three distinct domestic like products consisting of (i) sweepers and dethatchers, (ii) spreaders, and (iii) aerators. The respondent counsel for Superpower, a Chinese producer, further argued if three separate domestic like products are not found, "then the Commission should include other items in the single like product such as dump carts" and "push spreaders and other groomers" which, it argued, would otherwise meet the Commission's factors based on the petitioner's own domestic like product arguments.

Respondent counsel's postconference brief, pp. 15, 25.

⁷ *Certain Tow-Behind Lawn Groomers and Parts Thereof from China, Investigation Nos. 701-TA-457 and 731-TA-1153 (Preliminary)*, USITC Publication 4028, August 2008, p. 10.

In light of these comments by the Commission and as was the case in the preliminary phase of these investigations, data were collected for TBLGs as well as separately for each of the four types of TBLGs.⁸

Physical Characteristics and Uses

In these investigations, non-motorized TBLGs are a group of four distinct pieces of lawn grooming equipment: lawn aerators, dethatchers, spreaders, and sweepers. Each type of TBLG incorporates a hitch and is intended to be towed behind a lawn tractor, all terrain vehicle, utility type vehicle, riding lawn mower, or similar vehicle. Within the group, each piece of equipment has a different configuration and application, but all share the physical characteristics and uses imparted by their common requirement of a towing apparatus, and by their complementary functions for the common purpose of maintaining a healthy lawn. TBLGs are generally intended for personal use on residential lawn areas of a size that will effectively accommodate the apparatus (towing vehicle and piece of equipment) as opposed to manually powered (push) groomers, which are intended for smaller lawn areas, and motorized groomers, which tend to be of a size and weight designed for high-volume, commercial use.⁹ Depending on the application, TBLGs are designed to perform through ***, which represents an average life cycle of approximately *** years.¹⁰

There are similarities and differences among the four types of TBLGs.¹¹ In terms of physical characteristics, each of the four pieces share several features in addition to the tow hitch, including a similar size, a steel frame, an engage/disengage transport handle, and, in most cases, two wheels and a single axle.^{12 13} In terms of use, each of the four TBLG pieces features a separate and distinct function—aerating, dethatching, spreading, and sweeping—to achieve the collective lawn grooming purpose.^{14 15} The following sections provide a detailed description of the physical characteristics and use of each of the four types of TBLGs.¹⁶

⁸ In its views, the Commission advised the parties that written comments on the Commission's draft questionnaires for the final phase of the investigations should in particular address how the Commission should collect data necessary to the resolution of these domestic like product issues. No party requested the collection of additional information on domestic like product issues in the final phase of these investigations.

⁹ The petitioner's ***. The petitioner has also testified that TBLGs may be appropriate for a person with a lawn size of 5 acres or more. The petitioner believes that although lawn size may be a factor in the decision to purchase a tow groomer versus a push groomer, the decision is just as often based on whether or not the end-user has an appropriate towing vehicle. Petitioner's posthearing brief, pp. A-4 to A-5 and Exhibit 5.

¹⁰ The petitioner has not seen an increase in the trend for consumers to repair TBLGs rather than replace them at the end of a product's life cycle. Petitioner's posthearing brief, pp. A-19 and A-32.

¹¹ Hearing transcript, p. 40 (Smirnow).

¹² In addition, these products share general use parts, including washers, screws, nuts, and bolts.

¹³ Petitioner's prehearing brief, p. 6.

¹⁴ Petitioner's prehearing brief, p. 6.

¹⁵ Respondent presents arguments for three like products—dethatchers and sweepers, spreaders, and aerators—based primarily on each products contact with the soil and turf as well as frequency of use. Respondent also suggests that spreaders cover tow-behind, push, and spreaders mounted on lawn tractors by other means; and that aerators should cover all towed types including drum spike aerators. Respondent's prehearing brief, pp. 3-8.

¹⁶ Each TBLG product does have a corresponding push-style product that is designed to perform the same function. However, push products lack the physical features that would allow them to be attached to a residential lawn tractor or similar towing vehicle, and results in a different means for achieving the lawn grooming function. Hearing transcript, pp. 26-27 (Smirnow).

Aerators

Tow-behind aerators are designed to perforate the lawn with small holes, thereby loosening the soil and allowing air (primarily oxygen), water, and fertilizer to penetrate closer to the grass roots. This in turn enables the roots to grow deeper for a healthier lawn. Depending on the type of grass and lawn traffic, it is generally recommended that lawns be aerated once or twice a year, in the spring and/or fall.¹⁷ There are two basic types of aerators: one that simply slits openings in the soil (a “spike aerator”) and one which removes and drops out plugs of soil (a “plug aerator”). Spike aerators have the appearance of a series of spurs rotating on an axle, and plug aerators have the appearance of star-shaped, funnel-type knives rotating on an axle. The axle is suspended from and rotates beneath a tray with sides, which serves as the frame for the aerator and holds optional weights (*e.g.*, concrete blocks) in place to control the depth of the aerating action. Figure I-1 presents an image of a tow-behind spike aerator produced by Agri-Fab.

Figure I-1
TBLGs: Subject tow-behind aerator



Source: <http://www.agri-fab.com/>.

Dethatchers

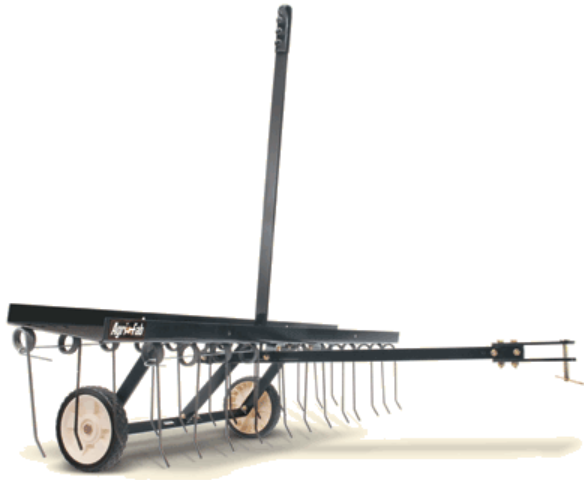
Tow-behind dethatchers are designed to scrape the lawn like a rake and loosen up any thatch, accumulated dried vegetation that collects around the blades of grass above the soil. A healthy lawn should have some thatch, which conserves moisture and serves to protect the roots from heat stress during periods of long hot summer sun and drought. However, too much thatch can compact and prevent sufficient penetration of air, water, and nutrients to the grass roots. Depending on thatch buildup, it is generally recommended that lawns be dethatched once a year to maintain their health.¹⁸ Dethatchers have a series of spring steel tines assembled along an alignment wire that is attached to a tray with sides,

¹⁷ Clemson University. *Home and Garden Information Center. Aerating Lawns*, HGIC 1200. <http://hgic.clemson.edu/factsheets/hgic1200.htm> (accessed July 11, 2008).

¹⁸ Bachman's Floral Home of Garden. *Dethatching and Aerating Lawns*. <http://www.bachmans.com/tipsheets/lawn/Dethatching.cfm> (accessed July 13, 2008).

which serves as the frame and holds optional weights (*e.g.*, concrete blocks) to control the depth of the dethatching action. Figure I-2 presents an image of a tow-behind dethatcher produced by Agri-Fab.

Figure I-2
TBLGs: Subject tow-behind dethatcher



Source: <http://www.agri-fab.com/>

Spreaders

Tow-behind spreaders are designed to distribute material such as grass seed and fertilizers from a funnel-shaped bin or hopper onto the lawn in an even fashion.¹⁹ Spreaders are generally used as necessary for feeding, seeding, and maintaining lawns. There are two basic types of spreaders. The "drop spreader" drops material from a funnel-shaped bin through a rotating agitator onto the lawn at a consistent rate, while the "broadcast spreader" dispenses material from the funnel-shaped bin onto a spinning tray that broadcasts or widely disseminates the material out and onto the lawn. Spreader sizes are usually distinguished by bin capacity in terms of either volume or weight (*e.g.*, 14 gallon dry or 125 pound). The bin assembly is attached to a frame. Figures I-3 and I-4 present images of subject tow-behind spreaders produced by Agri-Fab.

¹⁹ Respondent argues that push spreaders should be included with tow-behind spreaders as a separate like product. Respondent's prehearing brief, p. 5.

Figure I-3
TBLGs: Subject tow-behind "broadcast" spreader



Source: <http://www.agri-fab.com/>.

Figure I-4
TBLGs: Subject tow-behind "drop" spreader



Source: <http://www.agri-fab.com/>.

Sweepers

Tow-behind sweepers are designed to sweep debris (*e.g.*, grass clippings, leaves, and twigs) off of lawns and into a catcher bag for disposal. Although, lawns must generally be swept frequently for a pleasing appearance, it is recommended that some clippings be allowed to accumulate as a thin protective layer for the grass roots during periods of hot sun and drought.²⁰ Sweepers have a series of brushes attached to a drive shaft contained in a "brush housing," which is a curved piece of metal, plastic, or other material ("wrapper") designed to protect the brushes and control the flow of swept up debris into the catcher. As the sweeper is pulled over a lawn, the brushes rotate, sweeping up lawn debris and throwing it back into a catcher bag, which typically consists of a durable fabric (*e.g.*, canvas or a heavy nylon) supported by a frame that is attached to the brush housing. Sweepers vary in the width of the brush housing,²¹ height adjustment of the brushes, bag capacity, and brush speed. Figure I-5 presents an image of a tow-behind sweeper produced by Agri-Fab.

Figure I-5
TBLGs: Subject tow-behind sweeper



Source: <http://www.agri-fab.com/>.

The four distinct pieces of TBLG equipment share the common purpose of lawn maintenance and are frequently used together. In addition, certain TBLGs are designed to perform two grooming functions simultaneously. For example, a TBLG implement may combine the functions of an aerator and spreader or those of a sweeper and dethatcher. Figure I-6 presents an image of a combo tow-behind aerator and

²⁰ WisegEEK. *What is a Lawn Sweeper?* <http://www.wisegEEK.com/what-is-a-lawn-sweeper.htm> (accessed July 13, 2008).

²¹ Customers may select a brush housing width on the basis of the lawn area size and/or on the basis of the size of their mowing deck should they want to sweep as they mow. Conference transcript, pp. 67-68 (Harshman).

spreader produced by Agri-Fab,^{22 23} while figure I-7 presents an image of a combo tow-behind sweeper and dethatcher produced by Agri-Fab.²⁴

Figure I-6
TBLGs: Subject combo tow-behind aerator and spreader



Source: <http://www.agri-fab.com/>.

Figure I-7
TBLGs: Subject combo tow-behind sweeper and dethatcher



Source: <http://www.agri-fab.com/>.

The petitioner recently introduced a system of modular TBLGs to the market called “SmartLINK™.”²⁵ This system consists of a “master” platform—a common chassis and a common hitch—into which modular units—including a plug aerator, a turf shark curved blade (spike) aerator, and

²² Since the primary function of the combo tow-behind spreader/aerator is spreading, any trade in these products is classified as “spreaders” for the purpose of this report.

²³ ***, of China, is believed to also produce a combo tow-behind aerator and spreader sold under what is believed to be *** name, “Precise Fit.” Petitioner’s posthearing brief, p. A-6 and Exhibit 6.

²⁴ Since the primary function of the combo tow-behind sweeper/dethatcher is sweeping, any trade in these products is classified as “sweepers” for the purpose of this report.

²⁵ The petitioner reports selling *** SmartLINK™ products ***. Of these, *** are reported to be within the domestic like product category, including *** plug aerator modules, *** spike aerator modules, and *** tine dethatcher modules. Petitioner’s posthearing brief, p. A-33

a tine dethatcher— can be easily attached and changed without the use of tools.^{26 27} Figures I-8, I-9, and I-10 present images of a SmartLINK master platform holding a plug aerator module, a SmartLINK tine dethatcher module, and a SmartLINK turf shark curved blade aerator module, respectively.

Figure I-8
TBLGs: SmartLINK master platform and plug aerator



Source: <http://www.agri-fab.com/>.

Figure I-9
TBLGs: SmartLINK tine dethatcher



Source: <http://www.agri-fab.com/>.

²⁶ Petitioner’s prehearing brief, p. 10.

²⁷ The petitioner has patents or is in the process of attaining patents for each of the SmartLINK™ products. In addition, the U.S. Patent and Trademark Office has registered or is in the process of registering the petitioner’s ***. Petitioner’s posthearing brief, p. A-10 and A-33.

Figure I-10
TBLGs: SmartLINK turf shark curved blade aerator



Source: <http://www.agri-fab.com/>.

Table I-4 presents rankings by U.S. producers, U.S. importers, and U.S. purchasers, of the degree to which each of the four types of TBLGs share physical characteristics and uses with other types of TBLGs. Responding firms typically indicated that all types of TBLGs were “somewhat similar” or “not at all similar” in terms of their physical characteristics and end uses.²⁸

Table I-4
TBLGs: Firms' reporting of the degree of similarity between types of TBLGs in terms of physical characteristics and uses

| Reporting firms / product comparison | | Number of firms reporting-- | | | | |
|--------------------------------------|-------------|-----------------------------|---------------|----------------|------------------|--------------------|
| | | No familiarity | Fully similar | Mostly similar | Somewhat similar | Not at all similar |
| U.S. producers: | | | | | | |
| Aerators | Dethatchers | 1 | | 1 | | 2 |
| | Spreaders | | | | 1 | 4 |
| | Sweepers | 1 | | | 1 | 3 |
| Dethatchers | Spreaders | | | | 1 | 4 |
| | Sweepers | 1 | | | 1 | 3 |
| Spreaders | Sweepers | 1 | | | 1 | 3 |
| U.S. importers: | | | | | | |
| Aerators | Dethatchers | 1 | | 1 | 3 | 4 |
| | Spreaders | 3 | | | 2 | 4 |
| | Sweepers | 1 | | | 2 | 6 |
| Dethatchers | Spreaders | 4 | | | 1 | 4 |
| | Sweepers | 2 | | | 3 | 4 |
| Spreaders | Sweepers | 4 | | | 1 | 4 |

Table continued on next page.

²⁸ The petitioner argued that aerators, dethatchers, spreaders, and sweepers all share certain common physical characteristics, such as having a steel frame, and are used generally for “lawn grooming” purposes, even if the individual products have distinct lawn grooming functions. Hearing transcript, pp. 26-27 (Smirnow).

Table I-4 – Continued

TBLGs: Firms' reporting of the degree of similarity between types of TBLGs in terms of physical characteristics and uses

| Reporting firms / product comparison | | Number of firms reporting-- | | | | |
|--------------------------------------|-------------|-----------------------------|---------------|----------------|------------------|--------------------|
| | | No familiarity | Fully similar | Mostly similar | Somewhat similar | Not at all similar |
| Purchasers: | | | | | | |
| Aerators | Dethatchers | 1 | | 1 | 6 | 5 |
| | Spreaders | 2 | | | 1 | 10 |
| | Sweepers | 1 | | | 2 | 10 |
| Dethatchers | Spreaders | 2 | | | 1 | 10 |
| | Sweepers | 1 | | | 3 | 9 |
| Spreaders | Sweepers | 2 | | | 1 | 10 |

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

Manufacturing Facilities, Production Processes, and Production Employees

Agri-Fab produces the four types of TBLGs in the same facility, on the same assembly lines, using the same equipment and the same employees.^{29 30} Although TBLGs can reportedly be made of any material, the primary material used in the production of TBLGs has always been steel.³¹ Non-alloy, hot rolled steel, ***, is used to make steel tubing for frames, supporting trays, and the brush housing for sweepers.³² Cold rolled steel is used for the axles or shafts. These steel parts are formed by stamping, cutting, and/or pressing them from the steel material into the desired shape. The formed parts are welded as necessary, cleaned, dried, painted, dried again, inspected, and assembled as necessary into sub-components. These fabricated parts are then inspected, packaged for shipment with the various purchased items, and weighed to check for any missing parts. TBLGs generally require some hand assembly by the end user.³³

In addition to fabricating the major steel parts, the petitioner purchases various general purpose items to complete the product, including catcher bags, brushes, bearings, and gears for sweepers; plastic hoppers for the spreaders; spring steel tines for dethatchers; and wheels and a variety of fasteners (bolts, nuts, washers, and rivets) to complete each of the TBLGs.³⁴

Agri-Fab has increasingly automated the processes used to fabricate the major steel components of TBLGs for greater production efficiency. Agri-Fab ***. The combination of these *** with computerized machining equipment has allowed operators to ***. Robot technology is used for applications requiring welding and drilling, and laser equipment is used for the ***, precision tooling required for certain parts ***. The paint shop is automated with powder-coating (a form of powder paint) spray booths, which provide a cleaner working environment, reduced hazardous waste, and improved handling of painted parts within the plant for higher quality. The painting of all components is handled on the same paint line. Finally, the installation of computer-controlled assembly lines monitors each

²⁹ Staff tour of the petitioner's plant facility on July 1, 2008 and April 14, 2009.

³⁰ In addition to each of the four types of TBLGs, the petitioner produces products other than TBLGs on the same assembly line with the same employees, including push spreaders and tow sprayers.

³¹ Conference transcript, pp. 77-78 (Harshman).

³² Petitioner's prehearing brief, p. 4.

³³ Staff tour of the petitioner's plant facility on July 1, 2008 and April 14, 2009.

³⁴ Petition, p. 10.

product unit by weight as a check for missing parts,***.³⁵ Agri-Fab produces all of the TBLGs covered in these investigations are made on the same equipment with the same employees, some of whom ***.

Table I-5 presents rankings by U.S. producers, U.S. importers, and U.S. purchasers of the degree to which each of the four types of TBLGs share common manufacturing facilities, production processes, and production employees with other types of TBLGs. In terms of this factor, most responding producers and importers indicated that all types of TBLGs share “mostly similar” to “somewhat similar” common manufacturing processes, while responding purchasers reported “no familiarity” with the manufacturing process.³⁶

**Table I-5
TBLGs: Firms' reporting on the degree of similarity between types of TBLGs in terms of common manufacturing facilities, production processes, and production employees**

| Reporting firms / product comparison | | Number of firms reporting-- | | | | |
|--|-------------|-----------------------------|---------------|----------------|------------------|--------------------|
| | | No familiarity | Fully similar | Mostly similar | Somewhat similar | Not at all similar |
| U.S. producers: | | | | | | |
| Aerators | Dethatchers | 1 | | 3 | 1 | |
| | Spreaders | | | 1 | 3 | 1 |
| | Sweepers | 1 | | 2 | 2 | |
| Dethatchers | Spreaders | | | 1 | 2 | 2 |
| | Sweepers | 1 | | 2 | 2 | |
| Spreaders | Sweepers | 1 | | 1 | 3 | |
| U.S. importers: | | | | | | |
| Aerators | Dethatchers | 5 | | 2 | 2 | |
| | Spreaders | 5 | | 1 | 3 | |
| | Sweepers | 5 | | 2 | 2 | |
| Dethatchers | Spreaders | 5 | | 1 | 3 | |
| | Sweepers | 5 | | 2 | 2 | |
| Spreaders | Sweepers | 5 | | 1 | 3 | |
| U.S. Purchasers: | | | | | | |
| Aerators | Dethatchers | 7 | 1 | | 2 | |
| | Spreaders | 7 | | 1 | 2 | |
| | Sweepers | 7 | | 1 | 2 | |
| Dethatchers | Spreaders | 7 | | 1 | 2 | |
| | Sweepers | 7 | | 1 | 2 | |
| Spreaders | Sweepers | 7 | | 1 | 2 | |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | | | |

³⁵ Staff tour of the petitioner's plant facility on July 1, 2008 and April 14, 2009, and Lori Pfeiffer, *A Miracle in the Making; The History of Agri-Fab, Inc.*, Phoenix, AZ: Heritage Publishers, Inc., 2001, pp. 19-20.

³⁶ Petitioner argues that this factor is met since the production and related workers and machinery used in production are the same for each of the four types of TBLG throughout most, if not all, stages of TBLG production. Petitioner's prehearing brief, pp. 4-5.

Interchangeability

Table I-6 presents rankings by U.S. producers, U.S. importers, and U.S. purchasers of the degree to which each type of TBLG is interchangeable with other types of TBLGs. In terms of this factor, responding firms, for the most part, indicated that the four types of TBLGs are typically “not at all” interchangeable. However, Agri-Fab contends that the combo and SmartLINK™ TBLGs are interchangeable with the individual TBLGs that perform the same lawn grooming functions.³⁷

Table I-6
TBLGs: Firms reporting of the degree of similarity between types of TBLGs in terms of interchangeability

| Reporting firms / product comparison | | Number of firms reporting-- | | | | |
|--|-------------|-----------------------------|---------------|----------------|------------------|--------------------|
| | | No familiarity | Fully similar | Mostly similar | Somewhat similar | Not at all similar |
| U.S. producers: | | | | | | |
| Aerators | Dethatchers | 1 | | | | 4 |
| | Spreaders | | | | | 5 |
| | Sweepers | 1 | | | | 4 |
| Dethatchers | Spreaders | | | | | 5 |
| | Sweepers | 1 | | | | 4 |
| Spreaders | Sweepers | 1 | | | | 4 |
| U.S. importers: | | | | | | |
| Aerators | Dethatchers | 1 | | | 1 | 7 |
| | Spreaders | 1 | | | 1 | 7 |
| | Sweepers | 1 | | | 1 | 7 |
| Dethatchers | Spreaders | 2 | | | | 7 |
| | Sweepers | 2 | | | 1 | 6 |
| Spreaders | Sweepers | 2 | | | | 7 |
| U.S. Purchasers: | | | | | | |
| Aerators | Dethatchers | 1 | | 1 | | 11 |
| | Spreaders | 1 | | | | 12 |
| | Sweepers | 1 | | | | 12 |
| Dethatchers | Spreaders | 1 | | | | 12 |
| | Sweepers | 1 | | | 2 | 10 |
| Spreaders | Sweepers | 1 | | | | 12 |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | | | |

³⁷ Petitioner’s prehearing brief, p. 10.

Customer and Producer Perceptions

Table I-7 presents rankings by U.S. producers, U.S. importers, and U.S. purchasers of the degree to which customers and producers perceive each type of TBLG as similar to other types of TBLGs. In terms of this factor, half of the producers indicated that customers and producers perceive the four types of TBLGs as “not at all similar” with the balance of their responses being distributed among “fully similar” or “mostly similar” and “no familiarity” categories. Importers mostly indicated that customers and producers perceive the four types of TBLGs as “not at all similar” or that they had “no familiarity” with such perceptions. Purchasers, for the most part, indicated that customers and producers perceive the four types of TBLGs as “not at all similar” or else indicated that they had “no familiarity” with such perceptions.³⁸

The way in which TBLGs are marketed indicates that customers and producers perceive both similarities and differences between the four types of TBLGs. Agri-Fab reported that the vast majority of their sales are to home improvement retailers, which typically employ a buyer dedicated to TBLGs,^{39 40} and that their sales representatives generally “present and treat lawn groomers as a complete product line within the same family”^{41 42} when they meet with a customer.⁴³ In addition, Agri-Fab reports that its sales representatives prepare ***.⁴⁴ Agri-Fab’s product catalog, groups the different types of TBLGs by function with separate sections on sweepers and spreaders, but a single section titled groomers covering aerators and dethatchers.^{45 46 47} Agri-Fab claims that its catalogs are prepared for “general distribution” and are not ***.⁴⁸

With respect to how customers (retailers) market the four types of TBLGs, Agri-Fab and another domestic producer reported that retailers generally display all four TBLGs together in their establishment.⁴⁹ Agri-Fab submitted sales flyers from three retailers that advertised multiple types of TBLGs together, along with mowers and other types of lawn care equipment.⁵⁰ Sears markets all four types of TBLGs under “tractor attachments” on its website, grouping aerators with dethatchers, sweepers

³⁸ Petitioner argues that “with respect to the perceptions of U.S. purchasers, it is important to note their responses throughout the Commission’s questionnaires, not just their direct responses to question III-23. For example, when asked how *** exhibit price leadership, *** responds that ‘***.’ This passing reference to the phrase *** evidences an understanding of the product line as a collective family of products, rather than four discrete and unrelated articles.” Petitioner’s prehearing brief, p. 8.

³⁹ Petitioner’s prehearing brief, p. 5 and hearing transcript, p. 16 (Cohan).

⁴⁰ The investigation record also indicates that the vast majority of TBLG sales, both domestic and imported, are to retailers. Staff prehearing report, pp. II-1 and II-2.

⁴¹ Petitioner’s prehearing brief, p. 28.

⁴² Petitioner’s posthearing brief, p. A-10 and Exhibit 9, p.5 (last sheet).

⁴³ Hearing transcript, p. 77 (Smirnow).

⁴⁴ *** Petitioner’s posthearing brief, p. A-4 and Exhibit 5

⁴⁵ Petition, Exhibit I-7 and respondent’s prehearing brief, p. 15.

⁴⁶ Respondent and the Commission also noted that the petitioner’s catalog included tow-behind models and push models in the same categories. Respondent’s prehearing brief, p. 15 and hearing transcript, p. 76 (Aranoff), respectively.

⁴⁷ While the petitioner acknowledges the organization of their product catalog, they state that the sales representative is focused on the family of TBLG products, and that meetings concerning products other than tow-behind models are conducted in a separate meeting with separate buyers. Hearing transcript, pp. 77-79 (Smirnow).

⁴⁸ The petitioner further points out that the market for its push products is relatively *** compared to that for its TBLGs and does not warrant a separate catalog or catalog section for push products. Petitioner’s posthearing brief, p. A-4.

⁴⁹ Petitioner’s prehearing brief, pp. 5 and 7; Brinly Hardy Company’s questionnaire response, p. 34; and hearing transcript, p. 35 (Cohan).

⁵⁰ ***. Petitioner’s posthearing brief, A-10 and Exhibit 9.

with lawn vacs, and sprayers with spreaders.^{51 52 53} A majority of purchasers reported that they buy and market each type of TBLG separately rather than together.⁵⁴ U.S. market characteristics are discussed in more detail in Part II of this report, *Conditions of Competition in the U.S. Market*.

Table I-7

TBLGs: Firms’ reporting of the degree of similarity between types of TBLGs in terms of customer and producer perceptions

| Reporting firms / product comparison | | Number of firms reporting-- | | | | |
|--|-------------|-----------------------------|---------------|----------------|------------------|--------------------|
| | | No familiarity | Fully similar | Mostly similar | Somewhat similar | Not at all similar |
| U.S. producers: | | | | | | |
| Aerators | Dethatchers | 1 | 1 | 1 | | 2 |
| | Spreaders | | 1 | 1 | | 3 |
| | Sweepers | 1 | 1 | 1 | | 2 |
| Dethatchers | Spreaders | | 1 | 1 | | 3 |
| | Sweepers | 1 | 1 | 1 | | 2 |
| Spreaders | Sweepers | 1 | 1 | 1 | | 2 |
| U.S. importers: | | | | | | |
| Aerators | Dethatchers | 3 | 1 | 1 | | 4 |
| | Spreaders | 3 | 1 | 1 | | 4 |
| | Sweepers | 3 | 1 | 1 | | 4 |
| Dethatchers | Spreaders | 3 | 1 | 1 | | 4 |
| | Sweepers | 3 | 1 | 1 | | 4 |
| Spreaders | Sweepers | 3 | 1 | 1 | | 4 |
| U.S. Purchasers | | | | | | |
| Aerators | Dethatchers | 3 | 1 | 1 | 3 | 4 |
| | Spreaders | 3 | 1 | | 1 | 7 |
| | Sweepers | 3 | 1 | | 1 | 7 |
| Dethatchers | Spreaders | 3 | 1 | | 1 | 7 |
| | Sweepers | 3 | 1 | | 2 | 6 |
| Spreaders | Sweepers | 3 | 1 | | 1 | 7 |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | | | |

⁵¹ Respondent’s prehearing brief, p. 15, Exhibit 4.

⁵² With respect to customer and producer perceptions, ***.

⁵³ In response to a question concerning the practice of a retailer selling its private label TBLG along side the same manufacturer’s own branded product, petitioner responded that this is a *** practice in “brick-and-mortar” establishments. The petitioner further noted that if ***, they would *** be found on the internet as provided in a ***. Hearing transcript, p. 49 (Aranoff) and Petitioner’s posthearing brief, p. A-1 and Exhibit 4.

⁵⁴ The petitioner reported that depending on the customer and their particular situation in terms of inventory and availability of lower priced imports, some customers will buy all four types of TBLGs from them and some customers buy specific types of TBLGs. Hearing transcript, pp. 47-48 (Cohan).

Channels of Distribution

Table I-8 presents rankings by U.S. producers, U.S. importers, and U.S. purchasers of the degree to which each type of TBLG shares channels of distribution with other types of TBLGs. In terms of this factor, two-thirds of the responding U.S. producers and importers indicated that channels of distribution were “fully similar” or “mostly similar” among the four types of TBLGs with the balance of their responses falling mostly in the “no familiarity” category. U.S. producers and importers reported that over *** percent of their U.S. shipments of the domestic like product and subject imports were made to retailers in 2008.⁵⁵ Three-fourths of the responding U.S. purchasers indicated that channels of distribution were “fully similar,” “mostly similar,” or “somewhat similar.” Channels of distribution are discussed in more detail in Part II of this report, *Conditions of Competition in the U.S. Market*.

Table I-8
TBLGs: Firms’ reporting of the degree of similarity between types of TBLGs in terms of channels of distribution

| Reporting firms / product comparison | | Number of firms reporting-- | | | | |
|--|-------------|-----------------------------|---------------|----------------|------------------|--------------------|
| | | No familiarity | Fully similar | Mostly similar | Somewhat similar | Not at all similar |
| U.S. producers: | | | | | | |
| Aerators | Dethatchers | 1 | 2 | 2 | | |
| | Spreaders | | 2 | 2 | | 1 |
| | Sweepers | 1 | 2 | 2 | | |
| Dethatchers | Spreaders | | 2 | 2 | | 1 |
| | Sweepers | 1 | 2 | 2 | | |
| Spreaders | Sweepers | 1 | 2 | 2 | | |
| U.S. importers: | | | | | | |
| Aerators | Dethatchers | 3 | 2 | 4 | | |
| | Spreaders | 3 | 2 | 4 | | |
| | Sweepers | 3 | 2 | 4 | | |
| Dethatchers | Spreaders | 3 | 2 | 4 | | |
| | Sweepers | 3 | 2 | 4 | | |
| Spreaders | Sweepers | 3 | 2 | 4 | | |
| U.S. Purchasers: | | | | | | |
| Aerators | Dethatchers | 2 | 6 | 3 | 2 | |
| | Spreaders | 2 | 6 | 3 | 2 | |
| | Sweepers | 2 | 6 | 3 | 2 | |
| Dethatchers | Spreaders | 2 | 6 | 3 | 2 | |
| | Sweepers | 2 | 6 | 3 | 2 | |
| Spreaders | Sweepers | 2 | 6 | 3 | 2 | |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | | | |

⁵⁵ Compiled from data submitted in response to Commission questionnaires. A detailed breakout of U.S. producers’ and U.S. importers’ shipments is presented in Part II, Table II-1 of this report, p. II-2

Price

Table I-9 presents rankings by U.S. producers, U.S. importers, and U.S. purchasers of the degree to which each TBLG is priced similarly to other types of TBLGs. In terms of this factor, responding U.S. producers, U.S. importers, and U.S. purchasers were split, indicating that prices were “mostly similar,” “somewhat similar,” or “not at all similar” among the four types of TBLGs. Agri-Fab reports that prices for TBLGs generally fall within a range of \$60 to \$400, with some overlap among the specific TBLG products as shown in the following tabulation:⁵⁶

| TBLG product | General price range (<i>dollars</i>) |
|--------------|--|
| Aerators | \$60-300 |
| Dethatchers | 60-100 |
| Spreaders | 60-300 |
| Sweepers | 200-400 |

Pricing practices and prices reported for TBLGs in response to Commission questionnaires are presented in Part V of this report, *Pricing and Related Information*.

Table I-9

TBLGs: Firms’ reporting on the degree of similarity between types of TBLGs in terms of price

| Reporting firms / product comparison | | Number of firms reporting-- | | | | |
|--------------------------------------|-------------|-----------------------------|---------------|----------------|------------------|--------------------|
| | | No familiarity | Fully similar | Mostly similar | Somewhat similar | Not at all similar |
| U.S. producers: | | | | | | |
| Aerators | Dethatchers | 1 | | 1 | 3 | |
| | Spreaders | | | 2 | 2 | 1 |
| | Sweepers | 1 | | 1 | 2 | 1 |
| Dethatchers | Spreaders | | | 1 | 2 | 2 |
| | Sweepers | 1 | | 1 | 1 | 2 |
| Spreaders | Sweepers | 1 | | 1 | 1 | 2 |
| U.S. importers: | | | | | | |
| Aerators | Dethatchers | 2 | | 2 | 3 | 2 |
| | Spreaders | 2 | | 2 | 3 | 2 |
| | Sweepers | 2 | | 2 | 2 | 3 |
| Dethatchers | Spreaders | 2 | | 2 | 3 | 2 |
| | Sweepers | 2 | | 2 | 2 | 3 |
| Spreaders | Sweepers | 2 | | 2 | 2 | 3 |

Table continued on next page.

⁵⁶ Petitioner’s prehearing brief, p. 9.

Table I-9 – *Continued*

TBLGs: Firms' reporting on the degree of similarity between types of TBLGs in terms of price

| Reporting firms / product comparison | | Number of firms reporting-- | | | | |
|--------------------------------------|-------------|-----------------------------|---------------|----------------|------------------|--------------------|
| | | No familiarity | Fully similar | Mostly similar | Somewhat similar | Not at all similar |
| Purchasers: | | | | | | |
| Aerators | Dethatchers | 1 | | 1 | 5 | 5 |
| | Spreaders | 1 | | 1 | 6 | 4 |
| | Sweepers | 1 | | 1 | 3 | 7 |
| Dethatchers | Spreaders | 1 | | 1 | 4 | 6 |
| | Sweepers | 1 | | 1 | 3 | 7 |
| Spreaders | Sweepers | 1 | | 1 | 5 | 5 |

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

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

U.S. MARKET CHARACTERISTICS AND CHANNELS OF DISTRIBUTION

TBLGs consist of four categories: sweepers, aerators, dethatchers, and spreaders. Spreaders accounted for a plurality of apparent U.S. consumption in 2008, at *** percent, sweepers accounted for *** percent, dethatchers accounted for *** percent, and aerators accounted for *** percent. Individual homeowners generally use TBLGs to manage and groom their lawns, towing them behind lawn tractors, sit-down lawn mowers, or other vehicles.

Based on questionnaire responses, there is considerable overlap between the customers of U.S. producers and importers of TBLGs, including ***. Table II-1 shows TBLG sales by channel of distribution as reported by producers and importers. A *** of sales were to ***.

The Commission received questionnaire responses from 14 purchasers: ***.¹ Purchasers were asked how many suppliers they generally contact before making a purchase. *** purchasers reported that they contact ***, *** purchasers reported that they contact *** suppliers, *** purchasers reported that they contact *** suppliers, and *** reported that it contacts *** suppliers. Agri-Fab stated that, prior to competition from imports from China, purchasers were more likely to purchase a full product line from one supplier, but that purchasers are increasingly purchasing individual products from different suppliers based on price.²

Table II-1

TBLGs: Channels of distribution for U.S. producers' and U.S. importers U.S. shipments, 2006-08, January-March 2008, and January-March 2009

* * * * *

Purchasers were asked if they purchase each type of TBLG (aerators, lawn sweepers, spreaders, and dethatchers) separately or if they purchase different types of TBLGs together. Twelve of 13 responding purchasers reported that they purchase them separately.³ Purchasers were also asked if they market and/or sell different types of TBLGs together. Twelve of 14 responding purchasers that they do not market different types of TBLGs together. One of the *** purchasers that reported marketing different types of TBLGs together noted that each type of TBLG is priced separately and the other purchaser stated that it markets the different types together to increase awareness of its product range, although its customers typically purchase each type of TBLG individually.

When purchasers were asked if the relative shares of their total purchases of TBLGs from different sources had changed since 2006, five of 13 reported that their share of purchases from U.S. producers had decreased; two reported that their share of purchases from U.S. producers fluctuated, with one of the two reporting that its share of purchases from China had increased; and six reported that their relative shares of purchases from U.S. producers had remained constant. Three of seven purchasers reported that their share of purchases from China had increased; two purchasers reported that it had decreased, with one stating that its supplier discontinued a product and the other citing increased freight costs; one purchaser reported that its share of purchases from China had remained constant; and one reported that its share of purchases from China had fluctuated.⁴ One purchaser, ***, reported that its share of purchases from U.S. producers had decreased while its share of purchases from China had

¹ ***.

² Hearing transcript, p. 48 (Harvey).

³ One purchaser that reported that it purchases the different types of TBLGs separately, ***, also stated that ***.

⁴ See app. D for purchases, by source, as reported by purchasers, from January 2006 to March 2009.

increased, and cited factors such as assembly, packaging, brand, price, and quality as reasons for the shift. Another purchaser, ***, reported that its purchases from both U.S. producers and suppliers of imports from China were constant, though ***.

Five purchasers reported that they only purchase from U.S. suppliers: ***, ***, ***, which cited quality, location, and company reputation; ***, which cited availability; and ***, which reported that it ***.

U.S. producers reported that the vast majority of their TBLGs are sold from inventory, with lead times ranging from two days to two weeks. *** producers reported that *** percent or fewer of their TBLGs are produced to order, with lead times ranging from ***. *** of the *** responding importers of TBLGs from China reported that *** of *** sales of TBLGs are made from inventory, with lead times ***; *** reported that a majority of *** sales are made from the foreign manufacturer's inventory with lead times of ***, and *** reported that *** of TBLGs are produced to order, with lead times of ***. *** of TBLGs from Mexico reported that a *** of *** sales are made from inventory, with lead times ***.

When firms were asked to list the geographic regions of the United States where they sell TBLGs, both producers and importers reported that they served a nationwide market, with the largest share of U.S. producers' shipments in 2008 going to the ***. The largest share of U.S. shipments of imports from China in 2008 went to ***.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

The supply responsiveness of U.S. producers to changes in price depends on such factors as the level of excess capacity, the availability of alternate markets for U.S.-produced TBLGs, inventory levels, and the ability to shift production to the manufacture of other products. Available information indicates that U.S. producers have the ability to respond to changes in prices with changes in quantities, due primarily to ***.

Industry capacity

U.S. producers' annual capacity utilization rates for TBLGs decreased over the period of investigation, from *** percent in 2006 to *** percent in 2008. This level of capacity utilization indicates that the U.S. producers *** unused capacity with which they could increase production of TBLGs in the event of a price change.

Alternative markets

U.S. producers' exports, as a share of its total shipments, increased from *** percent in 2006 to *** percent in 2007 and declined to *** percent in 2008. These data indicate that the U.S. producers have *** ability to divert shipments to or from alternative markets in response to changes in the price of TBLGs.

Inventory levels

U.S. producers' ratio of end-of-period inventories to total shipments decreased from *** percent in 2006 to *** percent in 2007 and increased to *** percent in 2008. These data indicate that the U.S. producers *** ability to use inventories as a means of increasing shipments of TBLGs to the U.S. market.

Production alternatives

*** responding U.S. producers reported that they produce other products using the same manufacturing equipment and the same workers used in the production of TBLGs. These other products include ***.

Subject Imports

The responsiveness of supply of imports from China to changes in price in the U.S. market is affected by such factors as capacity utilization rates and the availability of home markets and other export markets. Based on available information, producers in China have the capability to respond to changes in demand with large changes in the quantity of shipments of TBLGs to the U.S. market. The main contributing factors to the high degree of responsiveness of supply are ***.

Industry capacity

During the period of investigation, the capacity utilization rate for reporting Chinese producers of TBLGs increased over the period, from *** percent in 2006 to *** percent in 2008, and is projected to be *** percent in 2009.

Alternative markets

Available data indicate that producers in China have the ability to divert shipments to or from alternative markets in response to changes in the price of TBLGs. The share of China's shipments that went to the United States decreased from *** percent in 2006 to *** percent in 2008, and is projected to be *** percent in 2009. The share of China's shipments to export markets other than the United States increased from *** in 2006 to *** percent in 2008, and is projected to be *** percent in 2009. The share of China's shipments going to the home market decreased from *** percent in 2006 to *** in 2008, and is projected to be *** percent in 2009.

Inventory levels

Responding Chinese producers' inventories, as a share of total shipments, increased from *** in 2006 to *** percent in 2008, and are projected to be *** percent in 2009.

Production alternatives

*** of three responding Chinese producers reported that they produce other products using the same manufacturing equipment and same workers used in the production of TBLGs. These other products include ***. One firm, ***, reported that it ***.⁵

Nonsubject Imports

Imports from Mexico, the only nonsubject source of TBLGs, as a share of the quantity of total U.S. imports of TBLGs, decreased from *** percent in 2006 to *** percent in 2008 and were *** percent in the first quarter of 2009. They decreased as a share of the value of total U.S. imports of TBLGs from *** percent in 2006 to *** percent in 2008 and were *** percent in the first quarter of 2009.

U.S. Demand

Demand Characteristics

The existence of substitutes for TBLGs, discussed below, indicates that demand for TBLGs is likely to be relatively price elastic. Demand for TBLGs is mostly determined by the overall economy, consumers' discretionary income, and weather conditions. Demand is also partly determined by the housing market, as the number of new homeowners may impact consumption of TBLGs, though it is unclear if existing homeowners would change their demand for TBLGs based on home sales.⁶ U.S. apparent consumption decreased by *** percent from 2006 to 2008, and the first quarter of 2009 is *** percent lower than the first quarter of 2008.

When asked how overall demand for TBLGs has changed since January 2006, *** of *** responding U.S. producers reported that demand had decreased, mostly citing the weakness in the housing market and the downturn in the economy.⁷ More specifically, Agri-Fab reported that demand was flat or slightly growing in 2006 and 2007 and decreased in 2008.⁸ *** reported that demand had increased, citing rural development and increased use of power lawn equipment. *** of four responding importers reported that demand for TBLGs has decreased since January 2006, due to the downturn in the housing market, general economic conditions, and decreased sales of lawn equipment.⁹ *** reported that demand had not changed. Seven of ten responding purchasers reported that demand had decreased since 2006, while three reported that it had increased.¹⁰

Agri-Fab stated that the economic recession has hurt sales of TBLGs, but also reported that the U.S. TBLGs industry has weathered recessions and downturns in the housing market before and that existing homeowners trying to sell their house in a depressed housing market might groom their lawns

⁵ Petitioner argued that most Chinese TBLG manufacturers would be able to transfer production from other products to TBLGs with little or no difficulty. Petitioner's postconference brief, p. 24.

⁶ For more information on demand, see parties' arguments from the preliminary phase of these investigations as summarized on the following page.

⁷ ***. Narrative responses from these firms are included as responses from U.S. producers.

⁸ Hearing transcript, p. 52 (Harvey). Petitioner also stated that it expects demand to further weaken in 2009 and slightly increase in 2010. Hearing transcript, p. 53 (Harvey).

⁹ ***.

¹⁰ ***.

with TBLGs in order to increase their home's "curb appeal" and thus their chances of finding a buyer.¹¹ Agri-Fab reported that its products are designed to have a life span of approximately *** under normal conditions.¹²

One respondent argued that several factors have impacted demand negatively: declining sales of lawn tractors; declining sales of single family homes; the general economic slowdown negatively impacting consumers' discretionary income; an aging baby boomer population which may be downsizing the sizes of their homes and lawns or may be more likely to hire professional lawn grooming services rather than groom their lawns themselves; the rise of mulching mowers that obviate the need for most TBLG functions; and the rise of zero-turn mowers which do not function efficiently with TBLGs.¹³

Petitioner countered that these factors are speculative and might just as easily have resulted in increased demand for TBLGs.¹⁴ Petitioner also asserted that if factors unrelated to low-priced subject imports were responsible for the declining demand for its products, then these factors should have reduced demand for subject imports to a similar degree, but subject import volume instead increased significantly.¹⁵ Moreover, it observed that zero-turn and mulching technologies have been in existence for far too long to account for any recent decline in demand for TBLGs.¹⁶

Respondent also alleged that decreased demand for petitioner's products could be at least partly due to the financial instability of Sears, allegedly one of petitioner's largest customers, over the period of investigation.¹⁷ *** reported that its annual purchases ***,¹⁸ Agri-Fab claimed that the trend for *** reflects the decline that the broader U.S. TBLGs market experienced by over the period of investigation.¹⁹

According to the Census Bureau, new home sales in the United States on an annual basis decreased by 53.9 percent from 2006 to 2008.²⁰ According to the National Association of Realtors, the index of pending sales of existing homes decreased by 24.2 percent from 2006 to 2008, and the index in March 2009 was 7.1 percent below the March 2008 level.²¹

¹¹ Hearing transcript, pp. 20-21 (Harvey). Conference transcript, pp. 31-32 (Harvey).

¹² Petitioner's posthearing brief, att. A, pp. A-19 and A-32.

¹³ Conference transcript, pp. 91-93, Swisher.

¹⁴ In particular, petitioner asserted that poor weather conditions could provide a greater incentive for homeowners to use TBLGs to keep their lawns groomed; that there is no evidence suggesting baby boomers are more likely to hire professional lawn grooming services, and that, in fact, the economic slowdown could be providing an incentive for baby boomers to save their discretionary income and begin grooming their lawns themselves. Petitioner's postconference brief, pp. 27-28.

¹⁵ Petitioner's postconference brief, p. 29.

¹⁶ Petitioner's postconference brief, p. 28 and exh. 4.

¹⁷ Conference transcript, p. 85 (Craven). Respondent asserted that Sears had specific failures in lawn and garden products in 2006, citing a message from the Chair of Sears Holding Corporation in 2007. Respondent's brief, p. 9.

¹⁸ See app. D.

¹⁹ Petitioner's posthearing brief, att. A, p. A-32.

²⁰ U.S. Census Bureau, http://www.census.gov/const/sold_cust.xls.

²¹ National Association of Realtors. <http://www.realtor.org/research/research/ehsdata>.

Business Cycle

Seasonality exists in the TBLGs market, with shipments to retailers peaking in the January through May period, leveling off during the summer, and then increasing slightly with respect to sweepers in the fall.²² This seasonality does not, however, reportedly affect the sales contracts or prices offered by suppliers because sales are often based on annual contracts that set a price and an estimated volume for the duration of the contract.²³

Substitute Products

U.S. producers reported that substitutes for TBLGs include push lawn groomers, lawn vacuums, baggers or grass catchers, and tow-behind lawn sprayers. However, petitioner reported that such products are limited in their substitutability for TBLGs because most homeowners that use TBLGs have lawns that are so big as to preclude the practical use of push lawn groomers.²⁴ Importer *** reported that mulching units attached to mowers can serve as a substitute for all four categories of TBLGs.²⁵ *** also reported that increasingly popular zero-turn mowers do not function efficiently with TBLGs because TBLGs eliminate the turning capabilities that give zero-turn mowers their value.²⁶ Such zero-turn mowers instead use bumper-mounted attachments to perform lawn grooming functions.²⁷ Three purchasers reported that push lawn groomers are possible substitutes for TBLGs, with one noting that they require manual force and thus take longer to use than TBLGs. Two of these purchasers also reported that motor driven versions of lawn groomers may substitute for tow behind sweepers and one reported that rakes may be possible substitutes for tow behind dethatchers or sweepers.

Agri-Fab disagreed with respondent's characterization that new technologies such as mulching units and zero-turn mowers obviate the need for TBLGs, noting that *** chose to begin importing TBLGs after both zero-turn and mulching technology had already penetrated the U.S. market.²⁸

Purchasers were asked to describe the similarities and differences between TBLGs and tow behind lawn carts and push lawn groomers.²⁹ Purchasers mostly reported that tow behind lawn carts are not interchangeable with TBLGs because they have a different use and application than TBLGs in that they only haul items and do not perform lawn grooming functions such as spraying, spreading, dethatching, or aerating. Purchasers also reported that TBLGs are used on larger plots of land than push lawn groomers, which require manual force. Three purchasers reported that the prices of TBLGs are generally higher than those of push lawn groomers or lawn carts, whereas two other purchasers reported that the prices may overlap, depending on quality, size, and features.

²² Conference transcript, pp. 60-61 (Cohan).

²³ Conference transcript, p. 61 (Cohan).

²⁴ Conference transcript, p. 15 (Smirnow).

²⁵ Respondent's postconference brief, p. 6.

²⁶ Respondent's postconference brief, p. 7.

²⁷ Conference transcript, p. 119 (Swisher).

²⁸ Petitioner's postconference brief, exh. 4.

²⁹ See app. E for purchasers' full responses.

SUBSTITUTABILITY ISSUES

The degree of substitutability between domestic products and subject and nonsubject imports and between subject and nonsubject imports is examined in this section. Information is based primarily on questionnaire responses from producers, importers, and purchasers.

Factors Affecting Purchasing Decisions

Available information indicates that a variety of factors are considered important in the purchasing decision for TBLGs. While quality and price were mentioned as being important factors in the sale of the product, other factors such as availability are also important considerations. Purchasers were asked to list the top three factors that they consider when choosing a supplier of TBLGs. Table II-2 summarizes the responses.

Table II-2
TBLGs: 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 |
| Quality | 9 | 3 | 2 |
| Price | 3 | 6 | 3 |
| Availability | 1 | 4 | 5 |
| Other ¹ | 1 | 2 | 4 |

¹ Other factors include one instance of “pre-arranged contracts/approved supplier” for the number one factor; one instance of “innovation” for the number two factor; one instance of “product consistency” for the number two factor; one instance of “on-time delivery” for the number three factor; one instance of “reliability” for the number three factor; one instance of “service” for the number three factor; and one instance of “product range” for the number three factor. One instance of “brand name,” one instance of “technical support,” one instance of “assembly time,” one instance of “packaging,” and one instance of “delivery time” were cited as the number four factor.

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

Quality was named by nine of 14 purchasers as the number one factor generally considered in deciding from whom to purchase TBLGs, while three purchasers indicated that it was the number two factor, and two reported that it was the number three factor. As indicated in table II-3, all responding purchasers indicated that product consistency and quality meeting industry standards were “very important” factors in their purchasing decisions.

Price was named by three purchasers as the number one factor generally considered in deciding from whom to purchase TBLGs, while six purchasers indicated that it was the number two factor, and two purchasers responded that it was the number three factor. As indicated in table II-3, twelve of fourteen responding purchasers indicated that price was a “very important” factor in their purchasing decisions. When asked how often they purchase the TBLGs that are offered at the lowest price, *** of thirteen responding purchasers reported “sometimes,” and the *** reported “usually.”

Availability was named by one purchaser as the number one factor generally considered in deciding from whom to purchase TBLGs, while four indicated that it was the number two factor, and five purchasers reported that it was the number three factor. As indicated in table II-3, thirteen of fourteen responding purchasers indicated that availability was a “very important” factor in their purchasing decisions and all responding purchasers indicated that reliability was a “very important” factor.

*** of fourteen responding purchasers, *** reported that they require suppliers to become certified for *** of their purchases. *** of these purchasers reported that the certification time is ***, another reported ***, while another reported ***. *** of the purchasers reported that *** supplier had failed in its attempt to qualify product with them. When purchasers were asked what factors they consider when qualifying a new supplier, purchasers most often cited product quality, delivery time, and cost. Other factors cited included brand recognition, existing relationship, service, sales terms, discounts, technical support, packaging, ease of use, and the manufacturing capacity of the producer. When purchasers were asked what characteristics they consider when determining quality, they most often cited the quality of the materials used (durability), ease of use (functionality), and construction/workmanship. Other characteristics cited included size, ruggedness, innovation, and customer satisfaction.

Table II-3

TBLGS: Importance of factors used in purchasing decisions, as reported by U.S. purchasers

| Factor | Number of firms reporting | | |
|------------------------------------|---------------------------|--------------------|---------------|
| | Very important | Somewhat important | Not important |
| Availability | 13 | 1 | 0 |
| Delivery terms | 7 | 7 | 0 |
| Delivery time | 11 | 3 | 0 |
| Discounts offered | 6 | 7 | 1 |
| Extension of credit | 5 | 5 | 4 |
| Price | 12 | 2 | 0 |
| Minimum quantity requirements | 6 | 5 | 3 |
| Packaging | 8 | 6 | 0 |
| Product consistency | 14 | 0 | 0 |
| Quality meets industry standards | 14 | 0 | 0 |
| Quality exceeds industry standards | 5 | 8 | 1 |
| Product range | 7 | 6 | 1 |
| Reliability of supply | 14 | 0 | 0 |
| Technical support/service | 10 | 4 | 0 |
| U.S. transportation costs | 6 | 8 | 0 |

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

Eleven of fourteen responding purchasers reported that they “always” know whether the TBLGs they purchase are imported or produced domestically and ten reported that they “always” know the manufacturer. Six of fourteen responding purchasers reported that TBLGs produced in the United States “always” meet minimum quality specifications, while the remaining eight reported that they “usually” meet minimum quality specifications. One of nine responding purchasers reported that TBLGs produced in China “always” meet minimum quality specifications, six reported “usually,” and two reported “sometimes.”

When purchasers were asked if they had purchased from one source although comparable TBLGs were available from another source at a lower price, *** of fourteen responding purchasers reported that they had done so due to brand recognition, loyalty or existing relationship with supplier, quality, lead

time, innovation, technical support, service, availability, reliability, reputation of company, price, and location of warehouse to limit freight costs.

Comparisons of Domestic Products and Subject Imports

In order to determine whether U.S.-produced TBLGs can generally be used in the same applications as imports from China, producers, importers, and purchasers were asked whether the products can “always,” “frequently,” “sometimes,” or “never” be used interchangeably. The majority of U.S. producers reported that they are always interchangeable, as shown in table II-4. Two of four importers that compared TBLGs from China with those from the United States reported that they are always or frequently interchangeable, while the remaining two reported that they are sometimes

Table II-4
TBLGs: Perceived degree of interchangeability of product produced in the United States and in other countries

| Country comparison | U.S. producers | | | | U.S. importers | | | | U.S. purchasers | | | |
|----------------------|----------------|---|---|---|----------------|---|---|---|-----------------|---|---|---|
| | A | F | S | N | A | F | S | N | A | F | S | N |
| U.S. vs. China | 3 | 1 | 0 | 0 | 1 | 1 | 2 | 0 | 9 | 3 | 1 | 0 |
| U.S. vs. Nonsubject | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 1 | 0 | 0 |
| China vs. Nonsubject | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 1 | 0 | 0 |

Note: “A” = Always, “F” = Frequently, “S” = Sometimes, and “N” = Never.
Source: Compiled from data submitted in response to Commission questionnaires.

interchangeable. One importer, ***, noted that, ***. A majority of purchasers reported that TBLGs from all sources are always interchangeable.

As indicated in table II-5, one of three responding U.S. producers reported that differences other than price between TBLGs produced in the United States and in China are frequently significant, and two reported that they are sometimes significant. Three of four responding importers reported that differences other than price between TBLGs produced in the United States and in China are frequently significant, and one reported that they are sometimes significant. One U.S. producer reported that the paint quality of imports from China is still problematic. Petitioner also reported that non-price factors such as technical and customer service, warranties, availability, and product range used to be significant factors in the sale of TBLGs, but that price has increasingly become the primary, if not sole, factor driving sales. Petitioner also reported that producers in China have directly copied its products, thus minimizing the non-price differences between its TBLGs and subject imports.³⁰

Two importers reporting that differences other than price are frequently significant cited quality, lead times, and availability in particular. Importer ***. It also reported that differences in lead time and availability are significant factors.

In the preliminary phase of these investigations, importer Swisher reported that it entered the TBLGs industry after hearing complaints from customers about leading manufacturers of TBLGs “not providing the innovation, top notch quality, and excellent service in brand” that the customers were demanding. Swisher also reported that it “developed novel ideas about branding, advertising, merchandising, and product improvements,” noting in particular its use of “striking white boxes,” four color labels, and graphics, that contrasted sharply to the “drab brown boxes” with two color printing on

³⁰ Petition, volume I, pp. 29-30 and exh. I-24.

the packaging that its competitors offered at the time.³¹ Petitioner asserted that many retailers display TBLGs outside of their packaging and that packaging, therefore, is not a factor that affects retail customers' willingness to purchase the product.³² Petitioner also argued that the alleged "lack of innovation" on the part of U.S. manufacturers is not credible, ***.³³ Purchaser *** also reported that it *** partly due to innovation.

Table II-5
TBLGs: Differences other than price between products from different sources¹

| Country comparison | U.S. producers | | | | U.S. importers | | | |
|----------------------|----------------|---|---|---|----------------|---|---|---|
| | A | F | S | N | A | F | S | N |
| U.S. vs. China | 0 | 1 | 2 | 0 | 0 | 3 | 1 | 0 |
| U.S. vs. Nonsubject | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| China vs. Nonsubject | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

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

Note: "A" = Always, "F" = Frequently, "S" = Sometimes, and "N" = Never.

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

Petitioner reported that producers in China do not currently *** to the United States; however, it notes that producers in China are quick to copy products and currently produce a *** that can compete against its ***.³⁴ Petitioner also reported that imported 48-inch sweepers may compete against its 46-inch sweepers.³⁵

*** of fourteen purchasers reported that there was a certain grade, size, or type of TBLG that is only available from a single source. *** reported that 48-inch sweepers are only available from China and *** reported that 42-inch core plug aerators are only available from ***.

When asked if there had been any significant changes in product range or marketing of TBLGs since 2006, all U.S. producers reported "yes," mostly citing the importance of private labeling, price, size, and the production capabilities and product offerings of Chinese producers. No responding purchaser reported making a significant change in the pattern of its purchases since 2006.

As indicated in table II-6, all or nearly all responding purchasers reported that U.S. product is comparable to the product from China with respect to availability, delivery terms, discounts offered, extension of credit, minimum quantity requirements, product consistency, quality meeting or exceeding industry standards, product range, and reliability of supply. Five of eleven responding purchasers indicated that the U.S. product is inferior to the product from China with respect to price (i.e., the U.S. product is generally higher in price), with five reporting the U.S. product is comparable, and one reporting that the U.S. product is superior. A slight majority of purchasers reported that the U.S. product is superior to the product from China with respect to delivery time.

³¹ Conference transcript, p. 89 (Swisher).

³² Petitioner's postconference brief, p. 16, fn. 29.

³³ Petitioner's postconference brief, pp. 16-17 and ***.

³⁴ Petitioner's postconference brief, exh. 1, p. 1.

³⁵ Petitioner's postconference brief, exh. 1, p. 4.

Other Country Comparisons

In addition to comparisons between the U.S. product and imports from the subject country, U.S. producer and importer comparisons between the United States and imports from nonsubject countries and between subject imports and nonsubject imports are also shown in tables II-4 and II-5. One producer reported that TBLGs produced in nonsubject countries are always interchangeable with domestically produced TBLGs. Five purchasers reported that TBLGs produced in nonsubject countries are always interchangeable with domestically produced TBLGs, while another reported that they are frequently interchangeable.

Table II-6
TBLGs: Comparisons between U.S.-produced and subject imported product, as reported by U.S. purchasers

| Factor | China | | |
|--|-------|---|---|
| | S | C | I |
| Availability | 1 | 9 | 1 |
| Delivery terms | 3 | 8 | 0 |
| Delivery time | 7 | 3 | 1 |
| Discounts offered | 0 | 9 | 2 |
| Extension of credit | 1 | 9 | 1 |
| Lower price ¹ | 1 | 5 | 5 |
| Minimum quantity requirements | 2 | 9 | 0 |
| Packaging | 3 | 6 | 2 |
| Product consistency | 2 | 9 | 0 |
| Quality meets industry standards | 2 | 9 | 0 |
| Quality exceeds industry standards | 2 | 8 | 0 |
| Product range | 2 | 9 | 0 |
| Reliability of supply | 2 | 9 | 0 |
| Technical support/service | 5 | 6 | 0 |
| Lower U.S. transportation costs | 3 | 7 | 0 |
| <p>¹ A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," this means that it rates the U.S. price generally lower than the subject import price.</p> <p>Note.--S=U.S. product is superior, C=U.S. product is comparable, I=U.S. product is inferior.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p> | | | |

ELASTICITY ESTIMATES

U.S. Supply Elasticity³⁶

The domestic supply elasticity for TBLGs measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of TBLGs. 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 TBLGs. Analysis of these factors above indicates that the U.S. industry is likely to be able to increase or decrease shipments to the U.S. market; an estimate in the range of 5 to 7 is suggested.

U.S. Demand Elasticity

The U.S. demand elasticity for TBLGs measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of TBLGs. This estimate depends on factors discussed above such as the existence, availability, and commercial viability of substitute products. Based on the available information, the aggregate demand elasticity for TBLGs is likely to be in the range of -1.25 to -1.5.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.³⁷ Product differentiation, in turn, depends upon such factors as quality and conditions of sale (availability, sales terms/discounts, etc.). Based on available information, the elasticity of substitution between U.S.-produced TBLGs and TBLG from China is likely to be in the range of 2 to 4.

³⁶ A supply function is not defined in the case of a non-competitive market.

³⁷ 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.

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

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the margins of dumping and subsidies was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of five firms that accounted for virtually all of U.S. production of TBLGs units during the period examined.

U.S. PRODUCERS

Table III-1 lists U.S. producers of TBLGs, their production locations, positions on the petition, production, and shares of reported production over the period for which data were collected.

Table III-1
TBLGs: U.S. producers, locations, positions on the petition, and production and shares of production in January 2006 to March 2009

| Firm | Production location(s) | Position | Total production (units) | Share of production (percent) |
|--|------------------------|------------------|--------------------------|-------------------------------|
| Agri-Fab | Sullivan, IL | Petitioner | *** | *** |
| Brinly Hardy ¹ | Jeffersonville, IN | *** | *** | *** |
| Ohio Steel Industries | Columbus, OH | *** ² | *** | *** |
| Precision Products | Los Angeles, CA | Supports | *** | *** |
| Spyker Spreaders | Urbana, IL | Supports | *** | *** |
| Total | | | *** | *** |
| ¹ Brinly Hardy produced a ***. Staff telephone interview with ***. ² ***. *** U.S. Producers' questionnaire response, section I-3. Note.—Because of rounding, figures may not add to the totals shown. Source: Compiled from data submitted in response to Commission questionnaires. | | | | |

Agri-Fab and Brinly Hardy accounted for *** of the reported U.S. production of TBLGs over the period examined. These two firms accounted for *** percent of reported U.S. production of TBLGs based on data gathered in the final phase of these investigations.¹

Table III-2 presents information on U.S. producers' ownership, TBLGs' share of firms' production of all products produced on the same equipment in 2008, and lists of other products produced on the same equipment.

¹ Table III-1.

Table III-2

TBLGs: U.S. producers' ownership, TBLGs' share of firms' production of all products produced on the same equipment, and lists of other products produced on the same equipment, 2008

| Firm | Ownership | TBLGs' Share of Firms' Total Production | Other products produced on the same equipment and their shares |
|-----------------------|--------------------|---|---|
| Agri-Fab | AF Holding Company | *** | Tow-behind carts (***) percent) and collectively, lawn mowers, lawn vacuums, blades, and snow-throwers (***) percent). |
| Brinly Hardy | *** | *** | Tow-behind carts (***) percent), agricultural implements (***) percent), lawn vacuums (***) percent), and lawn rollers and sprayers (***) percent). |
| Ohio Steel Industries | *** | *** | Tow-behind carts (***) percent), lawn rollers (***) percent), and loading ramps (***) percent). |
| Precision Products | *** | (1) | |
| Spyker Spreaders | *** | *** | Various other metal fabrication parts for firms, including poultry equipment. |

1***.

Note: – Because of rounding, figures may not add up to 100.

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

U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

Table III-3 presents U.S. producers' capacity, production, and capacity utilization. U.S. producers' capacity, production, and capacity utilization all declined from 2006 to 2008.

Table III-3

TBLGs: U.S. producers' capacity, production, and capacity utilization, 2006-08, January-March 2008, and January-March 2009

* * * * *

Production, Capacity, and Capacity Utilization by Product Type

Table III-4 presents data on U.S. producers' production, capacity, and capacity utilization of tow-behind aerators, dethatchers, spreaders, and sweepers. Table III-5 presents data on shares of U.S. production by product type. Tow-behind sweepers, which is the product accounting for the largest volume of TBLG production, and tow-behind spreaders experienced the sharpest declines in production and capacity utilization of the four types of TBLGs between 2006 and 2008. Production and capacity utilization was lower for all four types of TBLGs in interim 2009 compared with interim 2008. In general, producers reported that this was due to a decrease in sales in 2009 coupled with an inventory build-up at the end of 2008.

Table III-4

TBLGs: U.S. producers' production, capacity, and capacity utilization by product type, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table III-5

TBLGs: Shares of U.S. production by type, 2006-08, January-March 2008, and January-March 2009

* * * * *

U.S. PRODUCERS' U.S. SHIPMENTS AND EXPORTS

Table III-6 presents U.S. producers' U.S. shipments, export shipments, and total shipments. U.S. producers' U.S. shipments of TBLGs decreased by *** percent by quantity between 2006 and 2008. Agri-Fab accounted for *** of this decline, with its U.S. shipments declining by *** units out of a total decline of *** units as reported by responding U.S. producers. Further, Agri-Fab's decline in U.S. shipments between 2006 and 2008 related largely to ***. Of Agri-Fab's decrease of *** units in U.S. shipments between 2006 and 2008, *** units related to Agri-Fab's decreased shipments to *** and *** units related to Agri-Fab's decreased shipments to customers other than ***. ***.²

Table III-6

TBLGs: U.S. producers' U.S. shipments, export shipments, and total shipments, 2006-08, January-March 2008, and January-March 2009

* * * * *

US producer exports as a share of total shipments of TBLGs decreased irregularly from *** percent to *** percent between 2006 and 2008. Exports as a share of shipments were 10.5 percentage points lower during January-March 2009 than January-March 2008. The primary export markets were Canada, Italy, the United Kingdom, and Eastern Europe.

U.S. Shipments by Product Type

Table III-7 presents data on U.S. producers' U.S. shipments by product type. Between 2006 and 2008, U.S. producers' U.S. shipments of tow-behind aerators, dethatchers, spreaders, and sweepers all declined. When comparing the January-March period in 2009 with the comparable period in 2008, U.S. producers' U.S. shipments of tow-behind spreaders were lower, while shipments of tow-behind aerators, dethatchers, and sweepers were higher.

Table III-7

TBLGs: U.S. producers' U.S. shipments by product type, 2006-08, January-March 2008, and January-March 2009

* * * * *

² Agri-Fab's U.S. producers' questionnaire response, section II-9, e-mail from ***, and staff telephone interview with ***.

U.S. Shipments by Region

Table III-8 presents U.S. producers' U.S. shipments by region in 2008. Most producer shipments were made to customers in the Midwest and Southeast.

Table III-8
TBLGs: U.S. producers' U.S. shipments by region, 2008

* * * * *

U.S. PRODUCERS' IMPORTS AND PURCHASES

Three responding U.S. producers of TBLGs also import subject merchandise: ***, ***, ***. Agri-Fab argued that *** should be excluded from the domestic industry due to its business in the lawn grooming market "****" by decreasing production and increasing imports.^{3 4} This argument was also made during the preliminary phase of the investigation and the Commission found that "circumstances warrant the exclusion of related party *** from the domestic industry."^{5 6} ***. Only one of the responding U.S. producers reported purchasing domestic TBLGs. ***. Table III-9 presents U.S. producers' production and imports of TBLGs as well as the ratio of their imports to U.S. production over the period for which data were gathered.

Table III-9
TBLGs: Select producers' U.S. production, imports, and imports as a ratio to production, 2006-08, January-March 2008, and January-March 2009

* * * * *

U.S. PRODUCERS' INVENTORIES

Table III-10 presents U.S. producers' end-of-period inventories and the ratio of these inventories to U.S. producers' production, U.S. shipments, and total shipments over the period examined. U.S. producers typically increase their production of TBLGs in anticipation of the increase in demand for TBLGs in the spring, i.e., increased sales at the retail level. U.S. producers also ship out of inventory to meet demand in the first quarter of each year. This caused U.S. producers to generally have lower ratios of inventories to production in the partial year period than in the calendar years due to the seasonal nature of the TBLG business.

Table III-10
TBLGs: U.S. producers' end-of-period inventories, 2006-08, January-March 2008, and January-March 2009

* * * * *

³ Petitioner's prehearing brief, p. 13.

⁴ ***, *** U.S. Producer and Importer questionnaires, sections V-3d and II-6a, respectively.

⁵ *Certain Tow-Behind Lawn Groomers and Parts Thereof from China, Invs. Nos. 701-TA-457 and 731-TA-1153 (Preliminary)*, USITC Publication 4028, August 2008, p. 15.

⁶ Data excluding *** production are presented in appendix C at C-6. Data for tow-behind aerators, spreaders, and sweepers excluding *** production are presented in appendix C at C-7, C-8, and C-9, respectively. Data excluding *** production are presented in appendix C at C-10.

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Table III-11 presents U.S. producers' employment-related data during the period examined. During 2006-08, production and related workers, hours worked by PRWs, wages paid to PRWs, hourly wages, and unit labor costs decreased, while productivity increased.

Table III-11

TBLGs: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 2006-08, January-March 2008, and January-March 2009

* * * * *

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

U.S. IMPORTERS

Since the HTS does not provide for the importation of TBLGs under its own statistical reporting number, official import statistics are not available for use in these investigations. Import statistics, therefore, are compiled from data gathered in response to Commission questionnaires. The Commission requested information on 47 firms' import operations based on data provided in the petition and a review of proprietary Customs data. Of the 47 firms contacted, nine firms provided the Commission with useable data on their import operations.¹ An additional 16 firms responded to the Commission's inquiry to indicate that they did not import TBLGs during the period examined. Table IV-1 presents data on responding U.S. importers of TBLGs. Table IV-2 presents information on the types of TBLGs the responding U.S. importers import.

Table IV-1
TBLGs: U.S. importers by source, January 2006 to March 2009 aggregated

* * * * *

Table IV-2
TBLGs: Types of TBLGs importers, January 2006 to March 2009 aggregated

* * * * *

U.S. IMPORTS

Table IV-3 presents information on U.S. imports of TBLGs over the period examined.² Between 2006 and 2008, subject imports increased by *** percent, while nonsubject imports, i.e., *** imports from Mexico, decreased by *** percent, resulting in an overall increase of 81.4 percent for imports from all sources. With respect to negligibility, subject imports were *** percent of all imports in 2007, the most recent 12-month period preceding the filing of the petition for which data are available. Nonsubject imports possessed a lower average unit value than subject imports, because nonsubject imports consist of a single type of *** tow-behind spreader that ***, while subject imports consist of a wide variety of TBLGs (see table IV-4). The average unit value of imports by *** were noticeably lower than the unit value of imports by other companies. ***.

Table IV-3
TBLGs: U.S. imports, by sources, 2006-08, January-March 2008, and January-March 2009

* * * * *

¹According to data provided in the petition, the responding U.S. importers' U.S. imports of TBLGs represent an estimated *** percent of Chinese-origin TBLG supply in the U.S. market in 2008. Calculated from petition, exh. 2.

² See "Ratio of U.S. imports to U.S. production" later in Part IV for data on U.S. imports by product type.

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

Table IV-4 presents data on U.S. importers' U.S. shipments of imports by product type over the period examined.

Table IV-4

TBLGs: U.S. importers' U.S. shipments of imports by product type, 2006-08, January-March 2008, and January-March 2009

* * * * *

U.S. Importers' U.S. Shipments by Region

Table IV-5 presents information on U.S. importers' U.S. shipments by region in 2008. As with domestic producer shipments, most U.S. importer shipments were made to customers in the Midwest and Southeast.

Table IV-5

TBLGs: U.S. importers' U.S. shipments by region and source, 2008¹

* * * * *

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

Table IV-6 presents data on apparent U.S. consumption and U.S. market shares over the period examined for all TBLGs, while table IV-7 presents data on U.S. apparent consumption and U.S. market shares by product type (quantity only). Over the period examined, U.S. imports from China increased their share of the TBLG market as a whole (table IV-6). Subject import market share with respect to each type of TBLG increased between 2006 and 2008, but decreased when interim 2008 is compared with interim 2009. Subject imported tow-behind sweepers exhibited the largest increase in market share between 2006 and 2008.

Table IV-6

TBLGs: Apparent U.S. consumption and U.S. market shares, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table IV-7

TBLGs: Apparent U.S. consumption and U.S. market shares by product type, 2006-08, January-March 2008, and January-March 2009

* * * * *

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

Table IV-8 presents data on the ratio of U.S. imports to U.S. production for both total TBLGs and each product type.

Table IV-8
TBLGs: Ratio of U.S. imports to U.S. production for total TBLGs and by each product type,
2006-08, January-March 2008, and January-March 2009

* * * * *

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

U.S. producers reported that hot and cold rolled steel, rubber, tires and wheels, and sweeper bags are the principal raw materials used in producing TBLGs, with steel accounting for *** of total raw material costs. Other raw materials cited included plastic, packaging, paint, spreader hoppers, and fasteners, nuts, and bolts. U.S. producers reported that their costs for steel have increased by *** percent since 2006 and that their costs for tires and wheels have increased by *** percent over the same period. Figure V-1 below presents monthly prices of hot-rolled steel.

Figure V-1

Hot-rolled steel coil prices: Selling prices, monthly, January 2006-March 2009

* * * * *

U.S. Inland Transportation Costs

TBLGs are sold on a f.o.b. basis. U.S. producers reported that U.S. inland transportation costs of TBLGs range from *** to *** percent of the delivered price. Importers reported that U.S. inland transportation costs of TBLGs range from *** to *** percent of the delivered price.

U.S. inland shipping distances for U.S.-produced TBLGs and Chinese TBLGs were requested from both U.S. producers and U.S. importers. For the U.S. producers, *** percent of their U.S. sales in 2008 occurred within distances of 100 miles from their facilities, *** percent occurred within distances of 101 to 1,000 miles, and *** percent occurred within distances over 1,000 miles from their facilities. Responding importers of TBLGs from China reported that *** percent of their sales in 2008 occurred within 100 miles of their storage facilities, *** percent of their sales occurred within 101 to 1,000 miles, and *** percent of their sales occurred within distances over 1,000 miles. *** of TBLGs from Mexico reported that *** percent of its sales in 2008 occurred within 100 miles of its storage facilities, *** percent of its sales occurred within 101 to 1,000 miles, and *** percent of its sales occurred within distances over 1,000 miles.

Exchange Rate

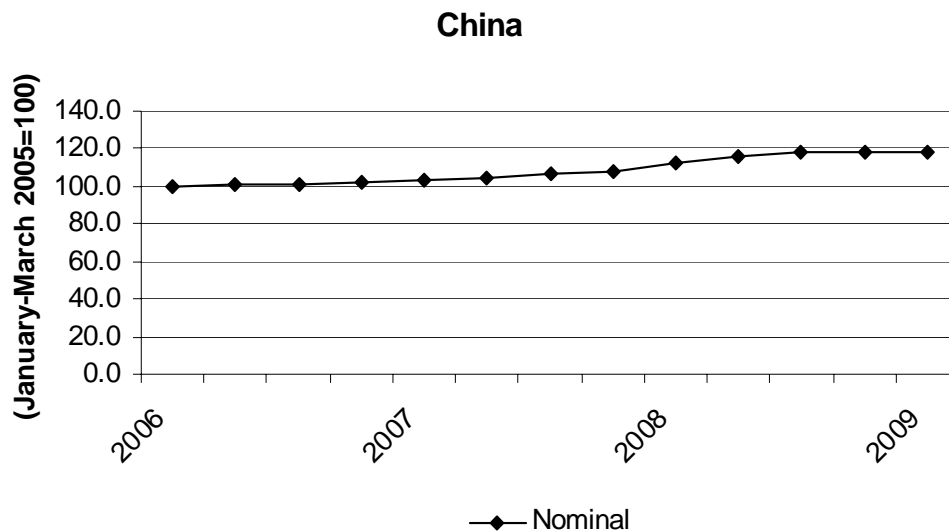
As shown in figure V-2, the U.S. dollar depreciated by 17.7 percent relative to the yuan in nominal terms from January 2006 to March 2009. A real value is unavailable.

In the preliminary phase of these investigations, the petitioner reported that the prices of subject imports were trending upward, but it does not know how much of this price change was related to the exchange rate of the U.S. dollar.¹ Importer Swisher reported that the weakening of the U.S. dollar has substantially changed its prices in the United States.²

¹ Conference transcript, p. 71 (Harvey).

² Conference transcript, p. 107 (Swisher).

Figure V-2
Exchange rate: Index of the nominal exchange rate of the Chinese currency relative to the U.S. dollar, by quarters, January 2006-March 2009



Source: International Monetary Fund, International Financial Statistics, May 6, 2009.

PRICING PRACTICES

Pricing Methods

When questionnaire respondents were asked how they determined the prices that they charge for TBLGs, *** U.S. producers reported the use of price lists, while *** (***) reported ***. Among importers of TBLGs from China, *** reported the use of transaction-by-transaction negotiations and contracts; *** of TBLGs from Mexico reported the use of price lists.

Prices of TBLGs are generally quoted on an f.o.b. rather than a delivered basis, for both U.S. producers and the importers.

When purchasers were asked which firms, if any, they considered price leaders, U.S. producer *** was named by seven purchasers, U.S. producer and importer *** was named by two purchasers, U.S. producer *** was named by two purchasers, importer *** was named by one purchaser, and importer *** was named by one purchaser. One purchaser reported that *** has the best quality and best pricing; another reported that *** has higher-end products and sets the upper price limit; another purchaser reported that ***'s prices are generally increasing; another reported that ***'s prices are based on raw material costs; another reported that *** accounts for the largest market share; another reported that *** supplies the *** and that *** supplies the ***; and another reported that *** offers a product mix at strategic price points to offer a good/better/best option for customers.

Sales Terms and Discounts

U.S. producers and importers of TBLGs from China were asked what share of their sales were on a (1) long-term contract basis (multiple deliveries for more than 12 months), (2) short-term contract basis (up to and including 12 months), and (3) spot sales basis (for a single delivery) during 2008. *** of *** responding U.S. producers reported that *** of their sales are on a short-term contract basis, one of which, ***, reported that *** percent of its sales are on a spot basis. *** reported that *** sales are on a

spot basis, while *** reported a mixture of sales on a short-term contract basis and spot basis. These producers' contracts typically last 8 to 12 months, have fixed prices, and do not contain meet-or-release provisions. Among the importers that reported sales of imports from China, *** reported that *** of their sales are on a short-term contract basis, *** reported that *** sales were on a spot basis, and *** reported that a majority of sales (*** percent) are on a short-term contract basis with the remainder being spot sales. *** of TBLGs from Mexico reported that *** percent of its sales are on a short-term contract basis and that the remainder were on a spot basis. These importers' contracts typically last 8 to 12 months, have fixed prices, and do not contain meet-or-release provisions. ***.

*** responding U.S. producers reported the use of discounts, with most citing discounts based on annual volume. Other specific arrangements cited included ***. *** importers that import TBLGs from China reported ***. ***. *** of TBLGs from Mexico reported ***.

PRICE DATA

The Commission requested U.S. producers and importers of TBLGs from China to provide quarterly data for the total quantity and f.o.b. value of selected products that were shipped to unrelated customers in the U.S. market.³ Data were requested for the period January 2006-March 2009. The products for which pricing data were requested are as follows:

Product 1.--Lawn sweeper: 38 inch (nominal housing width) "standard" sweeper; or a lawn sweeper with the following characteristics: cantilever bag, steel frame, and brush width of 37 inches or less.

Product 2.--Lawn sweeper: 42 inch (nominal housing width) "standard" sweeper; or a lawn sweeper with the following characteristics: cantilever bag, steel frame, brush width 41 inches or less.

Product 3.--Lawn sweeper: 42 inch (nominal housing width) "heavy duty" sweeper; or a lawn sweeper with the following characteristics: cantilever bag, steel frame, brush width 41 inches or less.

Product 4.--Aerator: 40 inch (nominal tray width) plug type; or a lawn aerator with the following characteristics: steel frame tray width of 39 to 41 inches, plug width of approximately 39 inches.

Product 5.--Aerator: 48 inch (nominal tray width) plug type; or a lawn aerator with the following characteristics: steel frame tray width of 47 to 49 inches, plug width of approximately 47 inches.

Product 6.--Spreader: Broadcast type, plastic hopper, 125 pound capacity (14 gallon dry) (nominal hopper capacity).

Product 7.--Dethatcher: 40 inch (nominal tray width) tine dethatcher; or a lawn dethatcher with the following characteristics: steel frame, tray width of 39 to 43 inches, tine assembly width of 38.5 to 42.5 inches.

³ Firms were also asked to report pricing data on sales of products imported from Mexico. *** reported importing any of the selected pricing products from Mexico. ***.

*** U.S. producers and *** importers provided pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters. Pricing data reported by these firms accounted for approximately *** percent of U.S. producers' U.S. commercial shipments of TBLGs during January 2006-March 2009 and *** percent of U.S. commercial shipments of imports from China over the same period.⁴

Price Trends

Weighted-average f.o.b. prices reported for U.S. producers and importers are presented in tables V-1 through V-7 and in figures V-2 through V-8 on a quarterly basis during January 2006-March 2009. For sales reported by U.S. producers, ***. For sales of products imported from China, ***.

Domestic prices of pricing products ***. The prices of products imported from China ***.

The weighted-average sales prices of U.S.-produced product 1 ***. The weighted-average sales prices of product 1 imported from China ***.

The weighted-average sales prices of U.S.-produced product 2 ***. The weighted-average sales prices of product 2 imported from China ***.⁵

The weighted-average sales prices of U.S.-produced product 3 ***. The weighted-average sales prices of product 3 imported from China ***.

The weighted-average sales prices of U.S.-produced product 4 ***. The weighted-average sales prices of product 4 imported from China ***.⁶

The weighted-average sales prices of U.S.-produced product 5 ***. The weighted-average sales prices of product 5 imported from China ***.⁷

The weighted-average sales prices of U.S.-produced product 6 ***. The weighted-average sales prices of product 6 imported from China ***.

The weighted-average sales prices of U.S.-produced product 7 ***. The weighted-average sales prices of product 7 imported from China ***.⁸

Table V-1

TBLGs: Weighted-average f.o.b. prices and quantities of domestic and imported product 1 and margins of underselling/(overselling), by quarters, January 2006-March 2009

* * * * *

⁴ ***. ***. Staff requested that *** submit its delivered purchase prices from all sources; the data are presented in appendix F. E-mail from ***, May 21, 2009; e-mail from staff, May 11, 2009; and e-mail from ***, July 22, 2008. ***.

Petitioner contended that ***. Petitioner's posthearing brief, att. A, pp. A-18. Staff notes that ***.

⁵ *** of sales prices of product 2 imported from China reported by *** excluded because the unit value was extremely high and involved *** quantity.

⁶ *** quarters of sales prices of product 4 imported from China reported by *** were excluded because the quantities were *** and thus an accurate price could not be calculated. *** of sales prices of product 4 imported from China reported by *** excluded because the unit values were ***. In its original submission to the Commission, importer ***. E-mail from staff to ***, June 15, 2009 and e-mail from ***, June 22, 2009.

⁷ *** quarters of sales prices of product 5 imported from China reported by *** were excluded because the quantities were *** and thus staff could not calculate accurate prices.

***. Petitioner's prehearing brief, pp. 26-27. Staff notes that ***.

⁸ *** quarters of sales prices of product 7 imported from China reported by *** were excluded because the quantities were *** and thus staff could not calculate accurate prices.

Table V-2

TBLGs: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by quarters, January 2006-March 2009

* * * * *

Table V-3

TBLGs: Weighted-average f.o.b. prices and quantities of domestic and imported product 3 and margins of underselling/(overselling), by quarters, January 2006-March 2009

* * * * *

Table V-4

TBLGs: Weighted-average f.o.b. prices and quantities of domestic and imported product 4 and margins of underselling/(overselling), by quarters, January 2006-March 2009

* * * * *

Table V-5

TBLGs: Weighted-average f.o.b. prices and quantities of domestic and imported product 5 and margins of underselling/(overselling), by quarters, January 2006-March 2009

* * * * *

Table V-6

TBLGs: Weighted-average f.o.b. prices and quantities of domestic and imported product 6 and margins of underselling/(overselling), by quarters, January 2006-March 2009

* * * * *

Table V-7

TBLGs: Weighted-average f.o.b. prices and quantities of domestic and imported product 7 and margins of underselling/(overselling), by quarters, January 2006-March 2009

* * * * *

Figure V-3

TBLGs: Weighted-average f.o.b prices and quantities of domestic and imported product 1, by quarters, January 2006-March 2009

* * * * *

Figure V-4

TBLGs: Weighted-average f.o.b prices and quantities of domestic and imported product 2, by quarters, January 2006-March 2009

* * * * *

Figure V-5
TBLGs: Weighted-average f.o.b prices and quantities of domestic and imported product 3, by quarters, January 2006-March 2009

* * * * *

Figure V-6
TBLGs: Weighted-average f.o.b prices and quantities of domestic and imported product 4, by quarters, January 2006-March 2009

* * * * *

Figure V-7
TBLGs: Weighted-average f.o.b prices and quantities of domestic and imported product 5, by quarters, January 2006-March 2009

* * * * *

Figure V-8
TBLGs: Weighted-average f.o.b prices and quantities of domestic and imported product 6, by quarters, January 2006-March 2009

* * * * *

Figure V-9
TBLGs: Weighted-average f.o.b prices and quantities of domestic and imported product 7, by quarters, January 2006-March 2009

* * * * *

Price Comparisons

Margins of underselling and overselling for the period are presented by product category in tables V-8 and V-9 below. There were 67 quarterly comparisons of products 1-7. The data show that prices of imports from China were lower than the U.S. producer prices in 52 quarterly comparisons, by margins ranging from *** percent. The prices of imports from China oversold U.S. producers prices in 15 quarterly comparisons, by margins ranging from *** percent. *** of the 15 instances of overselling occurred in comparisons involving product ***.

Table V-8
TBLGs: Margins of underselling/(overselling) by product, quarterly, January 2006-March 2009

* * * * *

Table V-9
TBLGs: Instances of underselling/overselling and the range and average of margins for products 1-7, January 2006-March 2009

* * * * *

LOST SALES AND LOST REVENUES

The Commission requested that U.S. producers report any instances of lost sales or revenues it experienced due to competition from imports of TBLGs from China since January 2005. *** provided *** lost sales allegations totaling \$*** and *** lost revenues allegations totaling \$***.⁹ Petitioner noted that lost sales allegations occurring in *** involving purchasers *** and *** would not appear as lost sales volume until ***.¹⁰ Another U.S. producer (***) reported that it had lost sales to lower-priced imports from China since January 2006 but did not provide specific allegations. Staff contacted the *** purchasers cited in the allegations; *** responded. *** purchasers confirmed lost sales allegations totaling \$***.¹¹ *** reported that it switched purchases of TBLGs from U.S. producers to suppliers of imports from China due to price.¹² The results are summarized in tables V-10 and V-11 and are discussed below.

*** was named in a lost sales allegation involving *** units of TBLGs valued at \$***, allegedly occurring in ***. It agreed with the allegation.

*** was named in *** lost sales allegations involving *** units of TBLGs valued at \$***, allegedly occurring in ***. It reported that it ***.

*** was named in *** lost sales allegations involving *** units of *** valued at a total of \$***, allegedly occurring in ***. ***.¹³ It disagreed with the allegations, stating that it considers many factors including ***. ***.¹⁴

Table V-10
TBLGs: U.S. producers' lost sales allegations

* * * * *

Table V-11
TBLGs: U.S. producers' lost revenue allegations

* * * * *

*** was named in *** lost sales allegations involving *** units of *** valued at a total of \$***, allegedly occurring in ***. *** reported that it ***. However, it did report that it switched purchases of TBLGs from U.S. producers to suppliers of TBLGs imported from China since 2005 due to price.¹⁵

*** was named in *** lost revenues allegations involving *** units of *** for total lost revenues

⁹ Respondent alleged in the preliminary phase of these investigations that petitioner's lost sales over the period of investigation were at least partly due to the financial instability of Sears, allegedly one of petitioner's largest customers, over the period of investigation. Conference transcript, p. 85 (Craven). Petitioner's postconference brief, pp. 28-29. Purchase data reported by *** shows that its annual purchases ***. See app. D.

¹⁰ Petitioner's posthearing brief, att. A, p. A-8.

¹¹ ***.

¹² *** did not respond to the specific lost sales allegations in which it was cited, valued at \$***. If those transaction are considered confirmed lost sales allegations, the value of confirmed lost sales allegations would total \$***.

¹³ Petitioner's prehearing brief, exh. 2.

¹⁴ See app. F.

¹⁵ Staff notes that *** reported purchases from suppliers of imports from China in *** and from U.S. suppliers in ***. It stated that it switched some purchases *** in *** due to better pricing. ***'s purchaser questionnaire, questions II-2 and II-3.

of \$***, allegedly occurring in *** . It disagreed with all of the allegations, stating that the accepted price quotes from U.S. suppliers cited in the allegations were prices it had previously paid for U.S. product and that its U.S. supplier could not adequately justify a price increase at the time of the transactions cited. *** also stated that ***.¹⁶

*** was named in a lost sale allegation involving *** units valued at \$***, allegedly occurring in ***. It agreed with the allegation, stating, however, that it only ordered *** units from its import supplier, which implies a lost sale valued at \$***. It also stated that the transaction ***. *** also commented that ***, due to lower-priced imports. It further commented that *** did not reduce its prices to compete with imports, stating that ***'s prices ***.

¹⁶ ***. *** chose Chinese suppliers “because of their flexibility in shipping small quantities to fill out containers, thereby minimizing freight and similar charges.” Respondent’s postconference brief, p. 13.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

Four U.S. producers of TBLGs provided usable financial data on their operations on TBLGs.^{1 2} These data are believed to account for the great majority of U.S. production of TBLGs in 2008. During the period for which data were requested, *** reported production and sales of all four types of TBLGs (aerators, dethatchers, spreaders, and sweepers), while *** reported production and sales of three types (aerators, spreaders, and sweepers), and *** reported production and sales of ***. No firm reported tolling operations, internal consumption, or transfers to related firms.

OPERATIONS ON TBLGs

Income-and-loss data for U.S. producers of TBLGs are presented in table VI-1. Selected company-specific financial data are presented in table VI-2. Reported aggregate net sales quantities and values both declined by about one-third from 2006 to 2008, most of which occurred between 2007 and 2008. Sales quantity was lower in January-March 2009 compared to the same period in 2008, but sales value was *** higher. Unit sales values increased from 2006 to 2007 but declined in 2008 to the same level as in 2006, and were higher in January-March 2009 compared to the same period in 2008. While per-unit revenues were flat between 2006 and 2008, per-unit combined operating costs and expenses (cost of goods sold (“COGS”) and selling, general, and administrative (“SG&A”) expenses) increased marginally. Thus, operating income, which ***,³ The reporting firms together registered ***.

Table VI-1

TBLGs: Results of operations of U.S. producers, 2006-2008, January-March 2008, and January-March 2009

* * * * *

Operations on aerators, dethatchers, spreaders, and sweepers (tables C-2 through C-5) showed some variation in terms of net sales quantity, per-unit revenues, and operating income. ***.

Table VI-2

TBLGs: Selected results of operations of U.S. producers, by firms, 2006-2008, January-March 2008, and January-March 2009

* * * * *

¹ The U.S. producers of TBLGs are ***. Three U.S. producers reported a fiscal year end of Dec. 31. ***. Separate income-and-loss data for U.S. producers of aerators, dethatchers, spreaders, and sweepers are presented in tables C-2 through C-5; these data for ***. Spyker Spreaders stated in its questionnaire response that it had ***; it also stated that it ***. E-mail to staff from ***, Cyclone, May 6, 2009. A fifth firm, ***, provided limited data in the trade section of its U.S. producers’ questionnaire response. Its ***.

² Commission staff verified the questionnaire response of Agri-Fab. *See* Verification Report, June 12, 2009 (EDIS document 405275).

³ ***.

Agri-Fab ***.⁴ Brinly Hardy ***.⁵ Ohio Steel's ***.⁶ Finally, Spyker Spreaders produced and sold ***.

A variance analysis for the operations of U.S. producers of TBLGs is presented in table VI-3. The information for this variance analysis is derived from table VI-1. The variance analysis provides an assessment of changes in profitability as it relates to changes in pricing, cost, and volume.⁷ The analysis shows that the decline in the operating income from 2006 to 2008 was attributable to the combined variances of price, net cost/expense, and volume (i.e., costs and expenses increased, while prices were flat). On the other hand, the favorable price variance was much greater than the unfavorable variance of net cost/expense, and operating income was higher in interim 2009 compared with interim 2008.

Table VI-3
TBLGs: Variance analysis on the operations of U.S. producers, 2006-2008, and January-March 2008 to January-March 2009

* * * * *

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

Capital expenditures and research and development (“R&D”) expenses are shown in table VI-4. Among the firms, *** accounted for *** of reported capital expenditures and R&D expenses. According to ***, its capital expenditures primarily reflect ***. Agri-Fab testified at the hearing that it had improved its production methods, including the way in which personnel are used during production and assembly, invested in computer technology, powder coat painting methods, automation and other technological advances to increase productivity, and analyzed its business practices.⁸ The firm’s R&D expenses include ***.⁹ Overall, total reported capital expenditures were less than total reported

⁴ Agri-Fab reported its financial data separately on aerators, dethatchers, spreaders, and sweepers. These data reconciled with its total sales reported in this section of the report. In 2008, sweepers accounted for *** percent of total sales, by quantity and value, respectively; dethatchers accounted for *** percent; spreaders accounted for *** percent; and aerators accounted for *** percent. As noted earlier, ***. There were ***. Sales AUVs ***. Agri-Fab reported ***.

⁵ Brinly Hardy reported its financial data separately for aerators, dethatchers, spreaders, and sweepers. ***. The discussion that follows is based upon the calendar year data. In 2008, sweepers accounted for *** percent of total sales, by quantity and value, respectively; dethatchers accounted for *** percent; spreaders accounted for *** percent; and aerators accounted for *** percent. As a share of total sales of the four types of TBLGs, Brinly Hardy sold *** between those years; the ***. Overall, the total quantity sold of the four types of TBLGs ***. Sales AUVs ***. Brinly Hardy reported ***. Two factors accounted for the ***.

⁶ Ohio Steel ***.

⁷ A variance analysis is calculated in three parts, sales variance, cost of sales variance, and SG&A expense variance. Each part consists of a price variance (in the case of the sales variance) or a cost variance (in the case of the cost of sales and SG&A expense variance) and a volume variance. The sales or cost variance is calculated as the change in unit price times the new volume, while the volume variance is calculated as the change in volume times the old unit price. Summarized at the bottom of the table, the price variance is from sales; the cost/expense variance is the sum of those items from COGS and SG&A variances, respectively, and the volume variance is the sum of the lines under price and cost/expense variance. The volume component of price variance is nearly always negative because of the way in which the volume component of the sales variance is calculated.

⁸ Hearing transcript, p. 13 (Cohan).

⁹ E-mail correspondence from ***, July 24, 2008. R&D expenses include the recently-introduced line of “Smart” series of lawn groomers. Hearing transcript, p. 15 (Cohan).

depreciation expense; capital expenditures also were lower than R&D expenses in each period except 2008.

Table VI-4

TBLGs: Capital expenditures and research and development expenses of U.S. producers, 2006-2008, January-March 2008, and January-March 2009

| Item | Fiscal year | | | January-March | |
|--|-------------|------|------|---------------|------|
| | 2006 | 2007 | 2008 | 2008 | 2009 |
| <i>Value (1,000 dollars)</i> | | | | | |
| Capital expenditures | *** | *** | *** | *** | *** |
| R&D expenses | *** | *** | *** | *** | *** |
| Note: Capital expenditures and most R&D expenses are accounted for by ***. | | | | | |
| Source: Compiled from data submitted in response to Commission questionnaires. | | | | | |

ASSETS AND RETURN ON INVESTMENT

Data on the U.S. producers' total assets and their return on investment ("ROI") are presented in table VI-5. For U.S. producers of TBLGs, the total assets utilized in the production, warehousing, and sale of such products declined from 2006 to 2008; a substantial part of the decline was accounted for by lower values reported in the *** category. Other categories were lower as well in 2008 compared with 2006. ROI generally followed operating income and rose from 2006 to 2007 before falling *** in 2008.

Table VI-5

TBLGs: U.S. producers' total assets and return on investment, fiscal years 2006-2008

* * * * *

CAPITAL AND INVESTMENT

The Commission requested U.S. producers of TBLGs to describe any actual or potential negative effects of imports of TBLGs from China on their firms' growth, investment, ability to raise capital, development and production efforts, or the scale of capital investments. Their responses are as follows:

Actual Negative Effects

- *** ***.
- *** "Yes. Reduction in the size of capital investments."
- *** "Yes. Reduction in the size of capital investments."
- *** "Yes. Cancellation, postponement, or rejection of expansion projects; a reduction in the size of capital investments."

Anticipated Negative Effects

- *** "Yes. Due to the low price of imports, we have had to offer our largest customer the option of importing, through our company, several of the products we have previously manufactured in the United States."

*** “Yes-lower sales are expected as well as lower margins from the sales that are retained. This will translate to fewer hours of work needed and fewer employees needed. In addition, it will not make economic sense to continue to invest in equipment and facilities for a business that is experiencing lower sales and lower margins.”

*** “Retail channels & low volume commercial opportunities are unavailable due to continued sinking price points.”

*** .

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,

¹ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider {these factors} . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw 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 and sales at less than fair value was presented earlier in this report; 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;" and 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 identified 12 potential producers of TBLGs in China.³ Three firms responded to the Commission's foreign producers'/exporters' questionnaire, including: ***.⁴ Table VII-1 presents information on the TBLG operations for the responding producers and exporters in China, while table VII-2 presents information on responding Chinese producers' and exporters' production and exports by type of TBLG.

TBLG production for responding Chinese producers/exporters increased irregularly from 2006 to 2008. In terms of Chinese producers' projections, two of the responding firms projected that their 2009 and 2010 exports to the United States would decrease to ***, and the third responding firm, ***, projected that its exports to the United States would decline 24.4 percent in 2009, relative to 2008, and 12.5 percent in 2010, relative to 2009.

Two of the responding Chinese producers, ***, provided estimates of their

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 Two of the 12 firms identified had addresses in Taiwan. The petitioner believes that these firms transship TBLGs produced in mainland China to the United States.

⁴ Of these three, only two are actual producers, as *** reportedly purchases its TBLGs that it exports to the United States from other firms in China.

share of Chinese production and exports to the United States of TBLGs. *** reported its share of Chinese production and exports to the United States were 15 and 20 percent, respectively, and *** reported its share of both Chinese production and exports to the United States were 1 percent. Petitioner argued that most Chinese TBLG manufacturers would be able to transfer production from other products to TBLGs with little or no difficulty. However, *** reported that it ***.⁵

Table VII-1
TBLGs: China’s production capacity, production, shipments, and inventories, 2006-08, January-March 2008, January-March 2009, and projected 2009-10

* * * * *

Table VII-2
TBLGs: Data on Chinese producers’ production and exports to the United States by product type 2006-08, January-March 2008, January-March 2009, and projected 2009-10

* * * * *

U.S. INVENTORIES OF TBLGS FROM CHINA

Table VII-3 presents data on U.S. importers’ reported inventories of TBLGs. Most of the reported U.S. inventories of Chinese-origin TBLGs relate to one firm, ***. However, as another firm, ***, began its import operations in 2006, it also began maintaining some inventories of TBLGs. The single largest importer of TBLGs from China over the period examined, ***, did not report any U.S. inventories of the subject merchandise because it reportedly ***.

Table VII-3
TBLGs: U.S. importers’ end-of-period inventories, 2006-08, January-March 2009, and January-March 2009

* * * * *

U.S. IMPORTERS’ CURRENT ORDERS

Table VII-4 presents data on imports arranged for importation after April 1, 2009 by quarter.

Table VII-4
TBLGs: U.S. importers’ arranged imports after April 1, 2009, by quarter

* * * * *

⁵ Petitioner’s postconference brief, p.24 and Jiashan Superpower’s foreign producers’/exporters’ questionnaire response, section II-3.

ANTIDUMPING AND COUNTERVAILING DUTY INVESTIGATIONS IN THIRD-COUNTRY MARKETS

None of the parties to these investigations is aware of any dumping findings or antidumping remedies imposed on TBLGs in third-country markets.

INFORMATION ON NONSUBJECT COUNTRIES

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.’”⁶

Global Market

Mexico

Besides China, Mexico is the only other known source of TBLGs in the U.S. market. The only known importer of TBLGs from Mexico is ***. *** imports only a single type of *** from Mexico. Petitioner argues that the second triggering factor for a *Bratsk* replacement/benefit analysis, i.e., existence of price competitive nonsubject imports, is not met in that the merchandise being imported from Mexico relates to a single type of TBLG, a ***. Agri-Fab also argues that:

“...to the best of its knowledge, ***. For that reason alone, it would be illogical to conclude that the domestic industry would have been injured by reason of imports from Mexico, or that Mexican imports contributed in any meaningful way to the domestic industry’s material injury.”⁷

In response to a Commission question at the hearing as to how the Commission should evaluate the presence of non-subject imports in each type of TBLG if the Commission were to find four like products, petitioner responded:

“Petitioner reiterates that the Commission should not find more than one domestic like product based on the record of this investigation. Should the Commission disagree and segment the domestic like product into two or more products, however, the *Bratsk* analysis remains largely unchanged.

“For *** of the TBLGs at issue, *** there is no need to conduct a *Bratsk* analysis whatsoever, as *** from countries other than China. For ***, the record suggests that there are a significant number of potentially price-competitive imports from Mexico. Therefore, while some form of *Bratsk* analysis may be necessary in this scenario, it does

⁶ *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).

⁷ Petitioner’s prehearing brief, pp. 46-47.

not lead to the conclusion that the domestic injury was injured by reason of non-subject imports.”⁸

Counsel for respondent Superpower argued that the Commission should conduct a full *Bratsk* analysis whether a single or multiple like products was found, stating “if the Commission finds a single like product, it should consider the impact of both the TBLG production facilities and other production facilities which may be able to be used for the production of TBLGs.” Regarding the finding of multiple like products, Superpower argued “the quantity of imports from Mexico of groomers produced in Mexico, when compared to the total U.S. shipments is not ***. However, if the like product is subdivided into multiple categories, the share of *** imported from Mexico, when compared to all imports of *** and to total U.S. shipments of *** is far greater.” Superpower admitted, however, that Mexican product ***.⁹ Table VII-5 presents the information on the TBLG operations for the one producer in Mexico, ***.

Table VII-5

TBLGs: Data for the producer in Mexico, 2006-08, January-March 2008, January-March 2008, and projected 2009-10

* * * * *

⁸ Petitioner’s posthearing brief, exh. A, p. A-15.

⁹ Respondent’s prehearing brief, pp. 23-24.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

DEPARTMENT OF COMMERCE**International Trade Administration**

A-570-939

Certain Tow Behind Lawn Groomers and Certain Parts Thereof 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.

EFFECTIVE DATE: June 19, 2009.

SUMMARY: The Department of Commerce ("Department") has determined that certain tow behind lawn groomers and certain parts thereof ("lawn groomers") from the People's Republic of China ("PRC") are being, or is likely to be, sold in the United States at less than fair value ("LTFV") as provided in section 735 of the Tariff Act of 1930, as amended (the "Act"). The final dumping margins for this investigation are listed in the "Final Determination Margins" section below. The period covered by the investigation is October 1, 2007, through March 31, 2008.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan, Thomas Martin or Zhulieta Willbrand, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4081, (202) 482-3936, and (202) 482-3147 respectively.

SUPPLEMENTARY INFORMATION:**Background**

The Department published its preliminary determination of sales at LTFV on January 28, 2009. *See Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary*

Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 74 FR 4929 (January 28, 2009) (“*Preliminary Determination*”). On February 19, 2009, Jiashan Superpower Tools Co., Ltd. (“*Superpower*”), informed the Department that it would not participate in the verification of its information and withdrew from the investigation. See Letter to Secretary of Commerce, “*Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China; A-570-939; Notice by Jiashan Superpower Tools Co., Ltd.*,” dated February 19, 2009. On March 2, 2009, Princeway Furniture (Dong Guan) Co., Ltd. (“*Princeway*”) also informed the Department that it would not participate in the verification of its information and withdrew from the investigation, and Princeway requested that the Department remove all of its submissions from the administrative record, certify the destruction of the submissions, and certify the destruction of Princeway’s submissions that are in the possession of interested parties to the proceeding. See Letter to Secretary of Commerce, “*Lawn Groomers from China*” dated March 2, 2009. On March 6, 2009, Superpower also requested that the Department remove all of its business proprietary submissions from the administrative record. See Letter to Secretary of Commerce, “*Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China; A-570-939; Withdrawal of Confidential Business Proprietary Information by Jiashan Superpower Tools Co., Ltd.*,” dated February 19, 2009. On March 6, 2009, Agri-Fab, Inc. (“*Petitioner*”) requested that the Department amend the *Preliminary Determination* with regards to Princeway. See Letter to Secretary of Commerce, “*Tow Behind Lawn Groomers and Parts Thereof from the People’s Republic of China, Request to Reconsider and Amend Preliminary Determination of Sales at Less Than Fair Value for Princeway*” dated March 6, 2009.

On March 12, 2009, Petitioner filed its case brief. After requesting an extension, Superpower filed a case brief on March 17, 2009. On March 18, 2009, Petitioner filed its rebuttal brief. Neither Princeway nor Superpower filed a rebuttal brief. No party requested a hearing.

Scope of the Investigation

The scope of this investigation covers certain non-motorized tow behind lawn groomers, manufactured from any material, and certain parts thereof. Lawn

groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of this investigation, even if the lawn groomer is designed to perform additional non-subject functions (e.g., mowing).

All lawn groomers are designed to incorporate a hitch, of any configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of this investigation. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the investigation.

Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a “plug aerator”), a series of discs with protruding spikes (a “spike aerator”), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface. Dethatchers consist of a frame, as well as a series of tines designed to remove material (e.g., dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (i.e., a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (“broadcast spreader”), a rotating agitator that allows the media to be released at a consistent rate (“drop spreader”), or any other configuration.

Lawn dethatchers with a net fully assembled weight (i.e., without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the investigation. Other lawn groomers—sweepers, aerators, and spreaders—with a net fully assembled weight (i.e., without packing, additional

weights, or accessories) of 200 pounds or less are covered by the scope of the investigation.

Also included in the scope of the investigation are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units—when imported with one or more lawn grooming modules—with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the investigation. Modular unit chasses, imported without a lawn grooming module and with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the investigation. When imported separately, modules that are designed to perform subject lawn grooming functions (i.e., sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

Lawn groomers, assembled or unassembled, are covered by this investigation. For purposes of this investigation, “unassembled lawn groomers” consist of either 1) all parts necessary to make a fully assembled lawn groomer, or 2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following “major components”:

- 1) an assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;
- 2) a sweeper brush;
- 3) an aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;
- 4) a spreader hopper;
- 5) a rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;
- 6) dethatcher tines;
- 7) aerator spikes, plugs, or other aerating component; or
- 8) a hitch, defined as a complete hitch assembly comprising of at least the

following two major hitch components, tubing and a hitch plate regardless of the absence of minor components such as pin or fasteners. Individual hitch component parts, such as tubing, hitch plates, pins or fasteners are not covered by the scope.

The major components or parts of lawn groomers that are individually covered by this investigation under the term "certain parts thereof" are: (1) brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

The products for which relief is sought specifically exclude the following: 1) agricultural implements designed to work (e.g., churn, burrow, till, etc.) soil, such as cultivators, harrows, and plows; 2) lawn or farm carts and wagons that do not groom lawns; 3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; 4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; 5) "push" lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; 6) dethatchers with a net assembled weight (i.e., without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers—sweepers, aerators, and spreaders—with a net fully assembled weight (i.e., without packing, additional weights, or accessories) of more than 200 pounds; and 7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (e.g., "drum-style" spike aerators).

The lawn groomers that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.80.0010, 8432.90.0030, 8432.90.0080, 8479.89.9896, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in this investigation.

Scope Comments

On December 30, 2008, and on January 7, 2009, Brinly–Hardy Company

("Brinly–Hardy"), a domestic producer of the merchandise under consideration, submitted comments on the scope of the investigation. Specifically, Brinly–Hardy requested that the scope be revised to define one of the eight listed "major components," specifically a hitch, as a complete hitch assembly, with all necessary components. Brinly–Hardy requested that individual components such as tubing, hitch plates or pins, not be covered by the scope.

On January 12, 2009, Petitioner submitted comments in response to Brinly–Hardy's request. Petitioner agreed that a hitch should be defined, but stated that a hitch should be defined as consisting of its own major components, i.e., tubing and a hitch plate, rather than all necessary components. Petitioner stated that the absence of minor components such as a hitch pin or fasteners is not intended to remove a hitch assembly from the definition of a hitch.

We have received no further comments on the scope of the investigation. Thus, we are making a final determination that hitches are defined as a complete hitch assembly comprising of at least the following two major hitch components, tubing and a hitch plate regardless of the absence of minor components such as pin or fasteners. The revised scope language is included in the "Scope of the Investigation" section, above. See also "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China," dated concurrently with this notice, which is hereby adopted by this notice ("Issues and Decision Memorandum") at Comment 4.

Analysis of Comments Received

All of the issues that were raised in the case and rebuttal briefs that were submitted in this investigation, and to which we have responded, are addressed in the Issues and Decision Memorandum. Appendix I to this notice contains a list of the issues that are addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum, which is a public document, is on file in the Central Records Unit, at the main Commerce Building, Room 1117, and is accessible on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

We have made the following changes to our calculations in the *Preliminary Determination*:

1. We considered Princeway and Superpower to be part of the PRC-wide entity because, as a result of their withdrawal from the investigation and refusal to allow the Department to verify their respective submitted information, both entities failed to demonstrate their qualification for a separate rate. See Issues and Decision Memorandum at Comment 2.
2. For the final determination we continue to assign an AFA rate to the PRC-wide entity, which now includes Princeway and Superpower. As AFA, we have assigned the PRC-wide entity a CONNUM-specific dumping margin, i.e., 386.28 percent, calculated for Superpower in the *Preliminary Determination*. See Issues and Decision Memorandum at Comment 2.
3. We have assigned the separate rate companies a dumping margin equal to the initiation margin. See Issues and Decision Memorandum at Comment 3.
4. We made a clarification to the scope language concerning the definition of hitch. See Issues and Decision Memorandum at Comment 4.

Adverse Facts Available

As noted in the "Background" section above, Superpower and Princeway withdrew from the investigation and refused to allow the Department to verify the information they had submitted in this proceeding. As a result both entities failed to demonstrate eligibility for a separate rate and thus are considered part of the PRC-wide entity.

Section 776(a)(2)(C) and (D) of the Act provides that, if an interested party significantly impedes a proceeding, or provides information that cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination.

Section 776(b) of the Act authorizes the Department to use an adverse inference with respect to an interested party if the Department finds that the party failed to cooperate by not acting to the best of its ability to comply with a request for information. As the PRC-wide entity, which includes both Superpower and Princeway, failed to cooperate by not acting to the best of its ability to comply with a request for

information an adverse inference is warranted under section 776(b) of the Act.

In our *Preliminary Determination*, we calculated antidumping duty margins for both Princeway and Superpower based on their submitted information. See *Preliminary Determination*. On February 19, 2009, Superpower withdrew from the investigation. Also, on March 2, 2009, Princeway withdrew from the investigation. Thus, both Princeway and Superpower withdrew from the investigation before the Department had an opportunity to verify their respective submitted information. Therefore, because both Princeway and Superpower withdrew from the investigation and failed to allow the Department to verify their information, we find that neither has demonstrated their eligibility for separate-rate status in this investigation and, thus, both are considered part of the PRC-wide entity. See Section 776(a)(2)(D) of the Act. Additionally, we find that due to their failure to act to the best of their ability in responding to the Department's requests for information, Princeway and Superpower, as part of the PRC-wide entity, significantly impeded the Department's proceeding. See Section 776(a)(2)(C) and (D) of the Act. Further, we have determined that when selecting from among facts available, an adverse inference is warranted for the PRC-wide entity pursuant to section 776(b) of the Act.

The PRC-Wide Rate

Because we begin with the presumption that all companies within a non-market economy ("NME") country are subject to government control and because only the companies listed under the "Final Determination Margins" section, below, have overcome that presumption, we are applying a single antidumping rate (*i.e.*, the PRC-wide rate) to all other exporters of subject merchandise from the PRC. These other 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, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from the companies eligible for separate rate status.

In the *Preliminary Determination*, the Department found that certain companies did not respond to our requests for information. See *Preliminary Determination*, 74 FR at 4932. We treated these PRC producers/exporters as part of the PRC-wide entity

because they did not demonstrate that they operate free of government control over their export activities. *Id.* No additional information was placed on the record with respect to any of these companies after the *Preliminary Determination*. Moreover, for the reasons noted above, we also consider Superpower and Princeway to be part of the PRC-wide entity.

As noted above, section 776(a)(2) of the Act provides that, if an interested party or any other person withholds information that has been requested by the administering authority, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Because the PRC-wide entity did not respond to our requests for information and because companies within the PRC-wide entity withheld information requested by the Department, and Superpower and Princeway, which are part of the PRC-wide entity, did not allow their information to be verified, pursuant to sections 776(a)(2)(A), (C), and (D) of the Act, we determine, as in the *Preliminary Determination*, that the use of facts otherwise 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 Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994), at 870. We determine that, because the PRC-wide entity did not respond to our requests for information, and Superpower and Princeway, which are part of that entity, prevented the Department from verifying its information, the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, we have determined that, in selecting a dumping margin from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

With respect to adverse facts available ("AFA"), for the final determination, we have assigned the PRC-wide entity a CONNUM-specific dumping margin,

i.e., 386.28 percent, calculated for Superpower in the *Preliminary Determination*. See Issues and Decision Memorandum at Comment 2. No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information. See 19 CFR 351.308(c) and section 776(b) of the Act; see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at 1. In selecting a facts-available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts-available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of the respondents' customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected the highest margin on an individual model which fell within the mainstream of Superpower's transactions (*i.e.*, a model that reflects sales of products that are representative of the broader range of sales used to determine U.S. price).

Separate Rates

In proceedings involving 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), 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); see also 19 CFR 351.107(d).

In the *Preliminary Determination*, the Department granted separate-rate status to Superpower, Princeway, Qingdao Huatian Truck Co., Ltd. ("Huatian"), and Nantong D & B Machinery Co., Ltd. ("Nantong"). As discussed above, the Department has determined to treat

Superpower and Princeway as part of the PRC-wide entity. We note that the information that Superpower and Princeway provided to the Department to demonstrate the absence of *de facto* and *de jure* control could not be verified due to their failure to cooperate. Consequently we have not granted Superpower and Princeway separate rates.

In the *Preliminary Determination*, we found that Huatian and Nantong demonstrated their eligibility for separate-rate status. See *Preliminary Determination*, 74 FR at 4931. Since the publication of the *Preliminary Determination*, no parties commented on the separate rate determinations. We continue to find that the evidence placed on the record of this investigation by Huatian and Nantong 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 Huatian and Nantong are eligible for separate-rate status.

Normally the dumping margin for separate rate companies 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*, we assigned Huatian and Nantong the dumping margin established equal to a simple average of the dumping margins calculated for the two mandatory respondents, *i.e.*, Superpower and Princeway. See *Preliminary Determination*, 74 FR at 4931 and 4935. Since both Superpower and Princeway are no longer receiving a separate rate, this methodology is not appropriate. In cases where the estimated weighted-average dumping margins for all individually investigated respondents are zero, *de minimis*, or based entirely on AFA, the Department may use any reasonable method to assign a rate to the separate rate companies. See Section 735(c)(5)(B) of the Act. In this case, where there are no mandatory respondents receiving a calculated rate and the PRC-wide entity's rate is based upon total AFA, we find that applying the rate alleged in the petition, incorporating revisions made in Petitioner's supplemental responses, to Huatian and Nantong is both reasonable and reliable for purposes of establishing a separate rate. See *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China*, 73 FR 6479

(February 4, 2008) and the accompanying Issues and Decision Memorandum at Comment 2. Therefore, the Department will assign a separate rate to Huatian and Nantong using the initiation rate of 154.72 percent, pursuant to its practice.

The initiation margin assigned to Huatian and Nantong is based on secondary information. According to section 776 (c) of the Act, when the Department relies on secondary information, it shall, to the extent practicable, corroborate that information. During our pre-initiation analysis of the petition, we examined the information used in the petition as the basis of export price and normal value ("NV") and, where appropriate, revised the calculations used to derive the petition dumping margins in determining the initiation dumping margins. Also, during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated various elements of the export price and NV information. For the final determination, we compared the average of the initiation margins to Superpower's CONNUM-specific margins and found that the initiation margin falls within these margins. No other information was available for corroboration purposes. Based on the foregoing, we have concluded that the initiation dumping margin is reliable and has probative value and, therefore, we consider this average dumping margin to be corroborated, to the extent practicable.

While Agri-Fab, Inc. argued in its case brief that Huatian and Nantong should receive the PRC-wide rate based on the actual rate calculated for Superpower, we have assigned the separate-rate companies the dumping margin of 154.72 percent alleged and revised in the petition. See Issues and Decision Memorandum at Comment 3.

Combination Rates

In the 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 Certain Tow Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Initiation of Antidumping Duty Investigation, 73 FR 42315 (July 21, 2008) ("Initiation Notice").

This practice is described in *Policy Bulletin 05.1*:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the

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

See *Policy Bulletin 05.1*, "Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries" available on the Import Administration's website at <http://ia.ita.doc.gov/policy/index.html>. For the final determination, we continue to apply this practice.

Final Determination Margins

We determine that the following weighted-average dumping margins exist for the period October 1, 2007, through March 31, 2008:

LAWN GROOMERS FROM THE PRC

| Exporter and Producer | Weighted-Average Margin (Percent) |
|---|-----------------------------------|
| Nantong D & B Machinery Co., Ltd. ¹ | 154.72 |
| Qingdao Huatian Truck Co., Ltd., a.k.a. Qingdao Huatian Hand Truck Co., Ltd. ² | 154.72 |
| PRC-wide Entity (including Superpower and Princeway) | 386.28 |

¹ Nantong D & B Machinery Co., Ltd. exports and manufactures subject merchandise.

² Qingdao Huatian Truck Co., Ltd. exports and manufactures subject merchandise.

Disclosure

We will disclose to parties the calculations performed within five days of the date of public announcement of this determination in accordance with 19 CFR 351.224(b). For merchandise under consideration from the exporter

producer combinations listed in the table above that have been granted separate rates, we have assigned the initiation rate. Therefore, for merchandise under consideration from these exporter producer combinations, entered, or withdrawn from warehouse, for consumption on or after the publication date of this final determination, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to 154.72 percent, as indicated above. The cash deposit rate for Superpower, Princeway, and other exporter-producer combinations is 386.28 percent, as indicated above.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S Customs and Border Protection ("CBP") to continue to suspend liquidation of all imports of subject merchandise as described in the "Scope of the Investigation" section, that are entered or withdrawn from warehouse, for consumption on or after January 28, 2009, which is the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin amount by which the NV exceeds U.S. price, as follows: (1) the rate for the exporter/producer combination listed in the chart above will be the rate we have determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide entity rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission 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, 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 within 45 days of this final

determination. 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 upon further instruction by the Department 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: June 12, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

Parties' Comments

Comment 1: Whether to retain Superpower's Business Proprietary Information ("BPI") data

Comment 2: Whether to assign the PRC-wide rate as total adverse facts available to both mandatory respondents

Comment 3: Whether to assign the PRC-wide rate to the separate rate respondents

Comment 4: Whether to clarify the scope language for hitches

Comment 5: Whether to amend the preliminary determination for Princeway

[FR Doc. E9-14470 Filed 6-18-09; 8:45 am]

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DEPARTMENT OF COMMERCE**International Trade Administration**

[C-570-940]

Certain Tow-Behind Lawn Groomers and Certain Parts Thereof 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 (Department) has determined that countervailable subsidies are being provided to producers and exporters of certain tow-behind lawn groomers (lawn groomers) and certain parts thereof 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: June 19, 2009.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3586 and (202) 482-1396, respectively.

SUPPLEMENTARY INFORMATION:**Period of Investigation**

The period for which we are measuring subsidies, *i.e.*, the period of investigation (POI), is January 1, 2007 through December 31, 2007.

Case History

The following events have occurred since the announcement of the preliminary determination, which was published in the **Federal Register** on November 24, 2008. *See Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971 (November 24, 2008) (*Preliminary Determination*).

The Department issued several supplemental questionnaires to the Government of the People's Republic of China (GOC), Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited (collectively, Princeway) and Jiashan Superpower Tools Co., Ltd. (Superpower). The Department received responses to these questionnaires in November and December 2008. Public

versions of the questionnaires and responses, as well as the various memoranda cited below, are available at the Department's Central Records Unit (Room 1117 in the HCHB Building) (hereafter referred to as "CRU").

From January 5 through January 21, 2009, we conducted verification of the questionnaire responses submitted by the GOC, Superpower and Princeway. We issued verification reports on February 27, 2009. *See Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China (GOC), Verification of the Questionnaire Responses Submitted by Princeway Furniture (Dong Guan) Co., Ltd. & Princeway Limited, and Verification of the Questionnaire Responses Submitted by Jiashan Superpower Tools Co., Ltd.*

On May 13, 2009, we issued our post-preliminary determination regarding the "Provision of Hot-Rolled Steel at Less Than Adequate Remuneration," "Export Incentive Payments Characterized as VAT Rebates," "Patent Subsidy Authorized by the Administration Rule for Patent Specific Fund of Jiashan County, SHAN KE [2006] No. 58," "Foreign Trade Assistance Subsidy (Exhibition Attendance Incentive Policy of Jiashan County: Article II.24 of SZF 132)," and "Amortization of Startup Costs Under Article 49 of the FIE Tax Regulations." *See Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, "Countervailing Duty Investigation of Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China"* (May 13, 2009).

We received a case brief from the GOC on May 20, 2009. Agri-Fab, Inc. (Petitioner) and respondent companies did not submit case briefs or rebuttal briefs. On December 23, 2008, the GOC submitted a timely request for a hearing pursuant to 19 CFR 351.310(c). On May 27, 2009, the GOC withdrew its request for a hearing.

Scope of the Investigation

The scope of this investigation covers certain non-motorized tow behind lawn groomers, manufactured from any material, and certain parts thereof. Lawn groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of this investigation, even if the lawn groomer is designed to perform additional non-subject functions (*e.g.*, mowing).

All lawn groomers are designed to incorporate a hitch, of any

configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of this investigation. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the investigation.

Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a "plug aerator"), a series of discs with protruding spikes (a "spike aerator"), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface. Dethatchers consist of a frame, as well as a series of tines designed to remove material (e.g., dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (i.e., a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (broadcast spreader), a rotating agitator that allows the media to be released at a consistent rate (drop spreader), or any other configuration.

Lawn dethatchers with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the investigation. Other lawn groomers sweepers, aerators, and spreaders with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the investigation.

Also included in the scope of the investigation are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular

units when imported with one or more lawn grooming modules with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the investigation.

Modular unit chassis, imported without a lawn grooming module and with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the investigation. When imported separately, modules that are designed to perform subject lawn grooming functions (i.e., sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

Lawn groomers, assembled or unassembled, are covered by this investigation. For purposes of this investigation, "unassembled lawn groomers" consist of either 1) all parts necessary to make a fully assembled lawn groomer, or 2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following "major components":

- 1) an assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;
- 2) a sweeper brush;
- 3) an aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;
- 4) a spreader hopper;
- 5) a rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;
- 6) dethatcher tines;
- 7) aerator spikes, plugs, or other aerating component; or
- 8) a hitch, defined as a complete hitch assembly comprising of at least the following two major hitch components, tubing and a hitch plate regardless of the absence of minor components such as pin or fasteners. Individual hitch component parts, such as tubing, hitch plates, pins or fasteners are not covered by the scope.

The major components or parts of lawn groomers that are individually covered by this investigation under the term "certain parts thereof" are: (1)

brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

The products for which relief is sought specifically exclude the following: 1) agricultural implements designed to work (e.g., churn, burrow, till, etc.) soil, such as cultivators, harrows, and plows; 2) lawn or farm carts and wagons that do not groom lawns; 3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; 4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; 5) "push" lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; 6) dethatchers with a net assembled weight (i.e., without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers sweepers, aerators, and spreaders with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of more than 200 pounds; and 7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (e.g., "drum-style" spike aerators).

The lawn groomers that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.80.0010, 8432.90.0030, 8432.90.0080, 8479.89.9896, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in this investigation.

Scope Comments

On December 30, 2008, and on January 7, 2009, Brinly-Hardy Company (Brinly-Hardy), a domestic producer of the merchandise under consideration, submitted comments on the scope of the investigation. Specifically, Brinly-Hardy requested that the scope be revised to define one of the eight listed "major components," specifically a hitch, as a complete hitch assembly, with all necessary components. Brinly-Hardy requested that individual components such as tubing, hitch plates or pins, not be covered by the scope.

On January 12, 2009, Petitioner submitted comments in response to Brinly-Hardy's request. Petitioner agreed that a hitch should be defined, but stated that a hitch should be defined as consisting of its own major components, *i.e.*, tubing and a hitch plate, rather than all necessary components. Petitioner stated that the absence of minor components such as a hitch pin or fasteners is not intended to remove a hitch assembly from the definition of a hitch.

We have received no further comments on the scope of the investigation. Thus, we are making a final determination that hitches are defined as a complete hitch assembly comprising of at least the following two major hitch components, tubing and a hitch plate regardless of the absence of minor components such as pin or fasteners. The revised scope language is included in the "Scope of the Investigation" section, above. *See also* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China" (June 12, 2009) (hereafter referred to as the "Decision Memorandum"), which is hereby adopted by this notice, at Comment 12.

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), the International Trade Commission (ITC) is required to determine pursuant to section 701(a)(2) of the Act whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a United States industry. On August 21, 2008, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from the PRC of subject merchandise. *See Certain Tow-Behind Lawn Groomers and Parts Thereof From China Determinations*, 73 FR 49489 (August 21, 2008); and *Certain Tow-Behind Lawn Groomers and Parts Thereof from China (Preliminary)*, USITC Pub. 4028, Inv. Nos. 701-TA-457 and 731-TA-1153 (August 2008).

Analysis of Comments Received

All issues raised in the case brief submitted by the GOC are addressed in the *Decision Memorandum*. 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 this public memorandum in the Department's 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 again used adverse inferences in accordance with sections 776(a) and (b) of the Act to determine the countervailable subsidy rates for the following five companies that provided no response to the Department's "quantity and value" questionnaire issued during the respondent selection process: Qingdao Hundai Tools Co., Ltd., Qingdao Taifa Group Co., Ltd., Maxchief Investments Ltd., Qingdao EA Huabang Instrument Co., Ltd., and World Factory Inc. (collectively, non-h; cooperative companies). A full discussion of our decision to apply adverse facts available (AFA) is presented in the *Decision Memorandum* in the section "Use of Facts Otherwise Available and Adverse Facts Available." On this basis, we determine that the AFA countervailable subsidy rate for the five non-cooperating companies is 264.98 percent *ad valorem*.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the companies under investigation, Superpower and Princeway. 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. As Princeway's rate was *de minimis*, it is not included in the all others rate.

| Exporter/Manufacturer | Net Subsidy Rate |
|---|--------------------|
| Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited | 0.56% (de minimis) |
| Jiashan Superpower Tools Co., Ltd | 13.30% |
| Maxchief Investments Ltd | 264.98% |

| Exporter/Manufacturer | Net Subsidy Rate |
|--|------------------|
| Qingdao EA Huabang Instrument Co., Ltd ... | 264.98% |
| Qingdao Hundai Tools Co., Ltd | 264.98% |
| Qingdao Taifa Group Co., Ltd | 264.98% |
| World Factory, Inc | 264.98% |
| All Others | 13.30% |

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 March 24, 2009, but to continue the suspension of liquidation of entries made from November 24, 2008 through March 23, 2009.

We will issue a countervailing duty order and reinstate the suspension of liquidation under section 706(a) of the Act 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, except for Princeway, which has a *de minimis* rate and will be excluded from an order. This exclusion will apply only to subject merchandise both produced and exported by Princeway. 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 Administrative Protective Order (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 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: June 12, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

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

Comment 2: Double Counting/
Overlapping Remedies

Comment 3: Cut-off Date for
Countervailing Subsidies

Comment 4: Discount Rate Used for
Benefit Calculations

Comment 5: Public Authority Status of
Hot-Rolled Steel Producer

Comment 6: Preferential Tax Policies for
Enterprises with Foreign Investment
(Two Free, Three Half Program)

Comment 7: Refund of Enterprise
Income Taxes on FIE Profits Reinvested
in an Export Oriented Enterprise

Comment 8: Import Tariff and VAT
Exemptions for Encouraged Industries

Importing Equipment for Domestic
Operations

Comment 9: Export Incentive Payments
Characterized as "VAT Rebates"

Comment 10: Amortization of Startup
Costs in the PRC Tax Law

Comment 11: Calculation of the All
Others Rate

Comment 12: Whether to Clarify the
Scope Language for Hitches

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BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-457 (Final) and 731-TA-1153 (Final)]

Tow-Behind Lawn Groomers 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-457 (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-1153 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether 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 and less-than-fair-value imports from China of tow-behind lawn groomers, provided for in subheadings 8432.40.00, 8432.80.00, 8432.90.00, 8479.89.98, 8479.90.94, and 9603.50.00 of the Harmonized Tariff Schedule of the United States.¹¹

¹¹ For purposes of these investigations, the Department of Commerce has defined the subject merchandise as:

“ * * * Certain non-motorized tow behind lawn groomers (“lawn groomers”), manufactured from any material, and certain parts thereof. Lawn groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of these investigations, even if the lawn groomer is designed to perform additional non-subject functions (e.g., mowing). All lawn groomers are designed to incorporate a hitch, of any configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of these investigations. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the investigations. Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist

of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a “plug aerator”), a series of discs with protruding spikes (a “spike aerator”), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface.

Dethatchers consist of a frame, as well as a series of tines designed to remove material (e.g., dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (i.e., a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (“broadcast spreader”), a rotating agitator that allows the media to be released at a consistent rate (“drop spreader”), or any other configuration. Lawn dethatchers with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the investigations. Other lawn groomers—sweepers, aerators, and spreaders—with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the investigations. Also included in the scope of the investigations are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units—when imported with one or more lawn grooming modules—with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the investigations. Modular unit chasses, imported without a lawn grooming module and with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the investigations. When imported separately, modules that are designed to perform subject lawn grooming functions (i.e., sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope. Lawn groomers, assembled or unassembled, are covered by these investigations. For purposes of these investigations, “unassembled lawn groomers” consist of either (1) all parts necessary to make a fully assembled lawn groomer, or (2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following “major components”:

- (1) An assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;
- (2) a sweeper brush;
- (3) an aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;
- (4) a spreader hopper;
- (5) a rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;
- (6) dethatcher tines;
- (7) aerator spikes, plugs, or other aerating component; or
- (8) a hitch.

The major components or parts of lawn groomers that are individually covered by these investigations under the term “certain parts thereof” are: (1) Brush housings, where the wrapper and end plates incorporating the brush assembly

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:* January 28, 2009.

FOR FURTHER INFORMATION CONTACT: Jennifer Merrill (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these 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.

may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit. The products for which relief is sought specifically exclude the following: (1) Agricultural implements designed to work (e.g., churn, burrow, till, etc.) soil, such as cultivators, harrows, and plows; (2) lawn or farm carts and wagons that do not groom lawns; (3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; (4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; (5) “push” lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; (6) dethatchers with a net assembled weight (i.e., without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers-sweepers, aerators, and spreaders-with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of more than 200 pounds; and (7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (e.g., “drum-style” spike aerators). The lawn groomers that are the subject of these investigations are currently classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.80.0010, 8432.90.0030, 8432.90.0080, 8479.89.9896, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in these investigations.”

1671b) are being provided to manufacturers, producers, or exporters in China of tow-behind lawn groomers, and that such products 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). The investigations were requested in a petition filed on June 24, 2008, by Agri-Fab, Inc., Sullivan, IL.

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 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 May 21, 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 June 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 June 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 June 12, 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 June 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 June 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 June 23, 2009. On July 8, 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 July 10, 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.

By order of the Commission.

Issued: March 9, 2009.

Marilyn R. Abbott,

Secretary to the Commission,

[FR Doc. E9-5427 Filed 3-12-09; 8:45 am]

BILLING CODE 7020-02-P

APPENDIX B
HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

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

Subject: Tow-Behind Lawn Groomers from China

Inv. Nos.: 701-TA-457 and 731-TA-1153 (Final)

Date and Time: June 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.

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

Katten Muchin Rosenman LLP
Chicago, IL
on behalf of

Agri-Fab, Inc.

Michael Cohan, President, Agri-Fab, Inc.
Gary Harvey, Vice President, Finance, Agri-Fab, Inc.

Mark S. Zolno)
Kazumune V. Kano) – OF COUNSEL
John P. Smirnow)

APPENDIX C
SUMMARY DATA

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Table C-1

TBLGs: Summary data concerning the U.S. market, 2006-08, January-March 2008, and January-March 2009

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Table C-2

Tow-behind AERATORS: Summary data concerning the U.S. market, 2006-08, January-March 2008, and January-March 2009

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Table C-3

Tow-behind DETHATCHERS: Summary data concerning the U.S. market, 2006-08, January-March 2008, and January-March 2009

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Table C-4

Tow-behind SPREADERS: Summary data concerning the U.S. market, 2006-08, January-March 2008, and January-March 2009

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Table C-5

Tow-behind SWEEPERS: Summary data concerning the U.S. market, 2006-08, January-March 2008, and January-March 2009

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Table C-6

TBLGs: Summary data concerning the U.S. market EXCLUDING *, 2006-08, January-March 2008, and January-March 2009**

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Table C-7

Tow-behind AERATORS: Summary data concerning the U.S. market EXCLUDING *, 2006-08, January-March 2008, and January-March 2009**

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Table C-8

Tow-behind SPREADERS: Summary data concerning the U.S. market EXCLUDING *, 2006-08, January-March 2008, and January-March 2009**

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Table C-9

Tow-behind SWEEPERS: Summary data concerning the U.S. market EXCLUDING *, 2006-08, January-March 2008, and January-March 2009**

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Table C-10
TBLGs: Summary data concerning the U.S. market EXCLUDING *, 2006-08, January-March 2008,**
and January-March 2009

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APPENDIX D

PURCHASERS' REPORTED PURCHASES BY SOURCE

Table D-1
TBLGs: Purchases of TBLGs, as reported by purchasers, 2006-08, and January-March 2009

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APPENDIX E

**PURCHASER RESPONSES TO QUESTIONS CONCERNING TBLGs AND
TOW BEHIND LAWN CARTS AND PUSH LAWN GROOMERS**

Purchasers were asked the following question concerning tow behind carts and/or push lawn groomers: Please describe the differences and similarities between TBLGs and tow behind carts and/or push lawn groomers with respect to the following factors: (a) **characteristics and uses**--describe the differences and similarities in the physical characteristics and end uses; (b) **interchangeability**--discuss the interchangeability in end use of the two products; (c) **manufacturing processes**--describe the two processes and include a discussion of the interchangeability of production inputs, machinery and equipment, and skilled labor; (d) **channels of distribution**--describe the specific end use/customer requirements and channels of distribution/market situation in which the products are sold; (e) **customer and producer perceptions**--describe any perceived differences in the two products (e.g., sales/marketing practices); and (f) **price**--provide a discussion and specific examples of prices for the two products.

- II-5a.** Lawn carts are used for hauling. None of the TBLGs defined are used for hauling. Push lawn groomers are a walk behind style, where the user manually pushes the tool. The TBLGs are all defined as 'Tow-behind' which means that they are attached to a tractor or ATV, etc. when in use.
- II-5b.** Usually tow-behind products are used in larger applications compared to push style lawn groomers.
- II-5c.** I have not seen the manufacturing process for either tow-behind or push lawn groomers.
- II-5d.** These products are sold anywhere from hardware stores to farm stores, home centers, power equipment dealerships, etc.
- II-5e.** Customers typically are looking for specific application types for these tools; i.e., someone who does not own a tractor would not be interested in tow-behind products.
- II-5f.** In the past, *** have bought from one source. The price range in TBLGs's have fluctuated over the past few years due to vast changes in raw materials. On average, the 10 TBLGS's that we stock range from a cost of \$46 to \$267, with retails ranging from \$69.99 to \$299.99.

- II-5a.** Tow behind carts can be pulled behind lawn tractors loaded with material such as dirt or sand and transported from one area to another, then dumped. Carts cannot sweep, aerate, dethatch or spread material.
- II-5b.** TBLGs and carts are not interchangeable. They are not designed to do the same job or for the same end use.
- II-5c.** The production process may be similar in that both carts and TBLGs are stamped and formed from metal. Both are welded products in as much. In as much that we do not produce these products, we do not know of all equipment, machinery, and labor involved in the production of these products.
- II-5d.** These products are sold anywhere from hardware stores to farm stores, home centers, and other retail environments. Generally a tow or three step distribution process. Customers' use will depend on need for product.
- II-5e.** Customers know and see the differences between carts and TBLGs. Customers look at how product is built and assembled for quality.
- II-5f.** Pricing differences between carts and TBLGs will vary. For example, a 42" pull behind lawn sweeper may retail for \$230. A tow behind 10 cubic foot cart may retail for \$100. Carts and TBLGs are not interchangeable in use. Completely different design and application.

- II-5a.** 38" lawn sweeper intended for use in lawn care and home applications
- II-5b.** TBLG's and carts are not interchangeable, they perform completely different functions. TLBGs are used to treat (aerate, dethatch, apply fertilizer, etc). Carts are used to transport items. However, TBLGs and push lawn groomers are somewhat interchangeable with differences likely based on user preference and or size of area being groomed. For example a user may chose to use a tow or push for a 1 acre lawn while a tow behind unit may be more appropriate for a 5 acre tract.
- II-5c.** Same processes apply to both TBLGs and carts as well as push lawn groomers.
- II-5d.** Product is sold at mass retailer outlet channels.
- II-5e.** Not aware of significant customer and producer perceptions that are similar or different for TBLGs, carts and push lawn groomers.
- II-5f.** The towing aspect of TBLGs and carts may result in higher prices for these items versus push lawn groomers due to strength requirements for towing. However, pricing is primarily a function of quality, specification, and the size of the products. All products have similar price points based on market position or brand.

- II-5a.** ***.
- II-5b.** ***
- II-5c.** Components are interchangeable.
- II-5d.** ***.
- II-5e.** Industry leading product or only one in market.
- II-5f.** Prices are comparable with industry pricing.

- II-5a.** TBLGs and tow behind carts are similar only in that they are both towed behind a powered vehicle. Push lawn groomers may be similar in function to their TBLGS counterparts, but differ in that they are not towed behind a powered vehicle.
- II-5b.** TBLGs and tow behind carts are not at all interchangeable, as each item has its own specific function. Within TBLGs the only items that are somewhat interchangeable are Dethatchers and Sweepers in that each is used to collect debris from turf or grass. Push lawn groomers are somewhat interchangeable with their TBLGS counterparts; however, they require manual force as opposed to being towed by a powered vehicle.
- II-5c.** Not applicable - We have no knowledge of the manufacturing process comparisons between TBLGs and tow behind carts and/or push lawn groomers.
- II-5d.** The channels of distribution for TBLGs and tow behind carts and/or push groomers are somewhat similar in that each item is sold (to a degree) through distributors, independent dealers and retail.
- II-5e.** Not applicable - We have no knowledge of customer and producer perceptions.
- II-5f.** The prices of TBLGs and tow behind carts and/or push groomers are somewhat similar in that they all fall within the range of \$45 to \$1075 in *** catalog depending on the specific product. The price differentials in the products are based on size and component quality.

- II-5a.** Carts are generally used for hauling and dumping. TBLGs are generally used for grooming mid to large size yards that require a tractor and push lawn groomers are used for smaller areas.
- II-5b.** Due to the very distinct end uses these products would probably not be interchangeable.
- II-5c.** This purchaser is not familiar with the manufacturing process to the extent it would allow comment on interchangeability of parts.
- II-5d.** Customer requirements vary by climate, geography and demographics (e.g. farming communities may have different requirements than subdivisions). These products are generally available

through internet, big box retailer, national department stores, local vendors or franchise dealerships.

- II-5e.** Marketing and sales generally are focused on the customer needs. See II-5(a) above.
- II-5f.** Pricing is generally based on the size of the product (e.g. TBLG and tow behind carts are similarly priced. Push groomers and carts tend to be less expensive).

- II-5a.** A cart is used to haul and dump items. A groomer is used for a specific purpose for lawn care.
- II-5b.** These are not used for the same thing and not interchangeable.
- II-5c.** I do not have knowledge of the manufacturing process.
- II-5d.** Both products require a motorized device to pull these items.
- II-5e.** Carts are more frequently purchased.
- II-5f.** Tow carts are a higher retail price than lawn groomers.

- II-5a.** TBLGs are typically wider, larger capacity and more heavy duty versus push lawn groomers, which are designed for use by single person *** don't require power equipment.
- II-5b.** N/a.
- II-5c.** Unknown.
- II-5d.** Unknown.
- II-5e.** Unknown.
- II-5f.** TBLGs (sweepers) range: \$150-250. Push groomers (sweepers) range: \$70-100. TBLGs (spreaders) range: \$50-75. Push groomers (spreaders) range: \$25-50.

- II-5a.** TBLGs and push groomers both provide the same end result, but TBLGs are usually used for bigger pieces of land and commercial end users, while push groomers are intended for more residential users with smaller, tighter spaces and less frequent usage.
- II-5b.** There are limited instances where interchangeability between TBLGs and push groomers are acceptable - primarily residential lawns from 1/3 to 1 acre in size.
- II-5c.** We do not manufacture TBLGs.
- II-5d.** We sell TBLGs through our retail stores, over the internet, and in our catalogs to home handymen, farmers, and small contractors.
- II-5e.** TBLGs are primarily perceived for agricultural and commercial usage where use is more frequent and more demanding. Push groomers are perceived for residential, light duty use.
- II-5f.** TBLGs and push groomers have overlapping pricing depending all quality and features.

- II-5a.** Same characteristics as far as materials. Same end user—usually end user has both.
- II-5b.** Not really interchangeable—two different products that are sometimes used together.
- II-5c.** I am not familiar with the manufacturing process.
- II-5d.** TBLGs and cars are generally sold at mass market, hardware chains, and independent retailers.
- II-5e.** Customers perceive name brands to be better.
- II-5f.** Not sure what you want here.

- II-5a.** TBLGs and tow-behind carts are made for ride-on mowers. Push lawn groomers are not made for ride-on mowers.
- II-5b.** See above.
- II-5c.** We have no direct knowledge of the manufacturing processes for the various products.
- II-5d.** All TBLGs have a similar distribution channel and all push products would have a similar distribution channel, though the two channels may or may not overlap.
- II-5e.** Customers seeking a TBLG or tow-behind cart likely have a ride-on mower and are not seeking a push product.
- II-5f.** Push products may be dramatically cheaper than TBLGs and tow-behind carts, but serve a different customer.

- II-5a.** TBLG's typically have a specific function or duty other than that of tow behind carts. Push lawn groomers would have the same specific duties as TBLG's but through "push" power rather than "tow" power.
- II-5b.** No interchangeability with tow behind carts. Much interchangeability with walk behind units.
- II-5c.** Very similar or exactly the same in all cases.
- II-5d.** Same in all cases.
- II-5e.** Walk behind lawn groomers are generally viewed as for smaller or specialty applications. Customers would see no relation between TBLG's and tow behind carts.
- II-5f.** Similar price range.

- II-5a.** The end uses are the same, characteristics vary based on end use and options or accessories.
- II-5b.** Completely interchangeable in end uses.
- II-5c.** Do not know.
- II-5d.** Similar channels of distribution – retail or specialty with on-line and brick and mortar.
- II-5e.** Do not know.
- II-5f.** Varies depending on use, quality, and equipment options.

APPENDIX F
DELIVERED PURCHASE PRICES AS REPORTED BY

Table F-1

TBLGs: Delivered purchase prices and quantities of product 2, domestically produced and imported from China, reported by *, by quarters, January 2006-March 2009**

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Table F-2

TBLGs: Delivered purchase prices and quantities of product 4, domestically produced and imported from China, reported by *, by quarters, January 2006-March 2009**

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Table F-3

TBLGs: Delivered purchase prices and quantities of product 5, domestically produced and imported from China, reported by *, by quarters, January 2006-March 2009**

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Table F-4

TBLGs: Delivered purchase prices and quantities of product 6, domestically produced and imported from China, reported by *, by quarters, January 2006-March 2009**

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Table F-5

TBLGs: Delivered purchase prices and quantities of product 7, domestically produced and imported from China, reported by *, by quarters, January 2006-March 2009**

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Figure F-1

Delivered purchase prices and quantities of product 2, domestically produced and imported from China, reported by *, by quarters, January 2006-March 2009**

* * * * *

Figure F-2

Delivered purchase prices and quantities of product 4, domestically produced and imported from China, reported by *, by quarters, January 2006-March 2009**

* * * * *

Figure F-3

Delivered purchase prices and quantities of product 5, domestically produced and imported from China, reported by *, by quarters, January 2006-March 2009**

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Figure F-4

Delivered purchase prices and quantities of product 6, domestically produced and imported from China, reported by *, by quarters, January 2006-March 2009**

* * * * *

Figure F-5
Delivered purchase prices and quantities of product 7, domestically produced and imported from China, reported by *, by quarters, January 2006-March 2009**

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