

Certain Tow-Behind Lawn Groomers and Parts Thereof from China

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

Publication 4028

August 2008

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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UNITED STATES INTERNATIONAL TRADE COMMISSION

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

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(a) and 1673d(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of certain tow-behind lawn groomers and parts thereof (“TBLG”), provided for in 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 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and alleged to be subsidized by the Government of China.

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

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

BACKGROUND

On June 24, 2008, a petition was filed with the Commission and Commerce by Agri-Fab, Inc., Sullivan, IL, alleging that an industry in the United States is materially injured by reason of subsidized imports of TBLGs from China and LTFV sales of TBLG imports from China. Accordingly, effective June 24, 2008, the Commission instituted countervailing duty investigation No. 701-TA-457 (Preliminary) and antidumping investigation No. 731-TA-1153 (Preliminary).

Notice of the institution of the Commission’s investigations and of a public conference 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 July 1, 2008 (72 FR 37494). The conference was held in Washington, DC, on July 15, 2008, 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)).

VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain tow-behind lawn groomers and parts thereof (“TBLG”) from China that are allegedly sold in the United States at less than fair value and allegedly subsidized by the Government of China.

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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

II. BACKGROUND

The petitions in these preliminary phase investigations were filed on June 24, 2008 by Agri-Fab, Inc. (“Agri-Fab”), the leading domestic producer of TBLGs, which participated in the staff conference and filed a postconference brief.³ Also participating in these investigations were Jiashan Superpower Tools Co., Ltd. (“Superpower”), a Chinese producer of subject merchandise, which participated in the staff conference and filed a postconference brief, and Swisher Mower and Machine Co. (“Swisher”), an importer of subject merchandise, which participated in the staff conference.

III. DOMESTIC LIKE PRODUCT

A. In General

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

¹ 19 U.S.C. §§ 1671b(a), 1673b(a); see also, e.g., Co-Steel Raritan, Inc. v. United States, 357 F.3d 1294 (Fed. Cir. 2004); American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996). No party alleged that there is a reasonable indication that the establishment of a domestic industry is materially retarded by reason of subject imports.

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

³ Confidential Staff Report, Memorandum INV-FF-089 (August 1, 2008) (“CR”) at I-1; Public Staff Report, (“PR”) at I-1; Conference Transcript (“Tr.”) at 5 (Zolno) (stating that Agri-Fab is “the leading domestic producer of [TBLGs.]”); Petition at 33 (stating that Agri-Fab is “the largest TBLG producer”).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(4)(A).

“domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁶

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁷ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁹ Although the Commission must accept the determination of the U.S. Department of Commerce (“Commerce”) as to the scope of the imported merchandise that is allegedly subsidized and sold at less than fair value,¹⁰ the Commission determines what domestic product is like the imported articles Commerce has identified.¹¹ The Commission must base its domestic like product determination on the record in these investigations. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent domestic like product issues.¹²

B. Product Description

In its notices of initiation, the U.S. Department of Commerce (“Commerce”) defined the imported merchandise within the scope of the investigations as:

[C]ertain 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

⁶ 19 U.S.C. § 1677(10).

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

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

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

¹⁰ See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) (unpublished opinion) (“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).

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

¹² See, e.g., Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp. 2d 1298, 1304-05 (Ct. Int’l Trade 2000); Nippon, 19 CIT at 455; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int’l Trade 1988); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int’l Trade 1988).

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 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.¹³

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 for the promotion of healthy, attractive lawns.¹⁴ Tow-behind aerators punch small holes in the soil to facilitate the penetration of oxygen, water, and fertilizer, which nourish grass.¹⁵ 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.¹⁶ 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.¹⁷ Tow-behind sweepers use rotating brushes to sweep debris, such as grass clippings, leaves, and

¹³ CR at I-4-6; PR at I-3-5.

¹⁴ CR at I-10; PR at I-9.

¹⁵ CR at I-10-11; PR at I-9-10.

¹⁶ CR at I-11-12; PR at I-10-11.

¹⁷ CR at I-12; PR at I-11-12.

twigs, off the surface of a lawn and into a catcher bag for disposal, in order to improve the lawn's appearance.¹⁸

C. Like Product Analysis

In these preliminary investigations, Agri-Fab argues that the Commission should define the domestic like product to encompass all TBLGs, coextensive with the scope of the investigations defined by Commerce.¹⁹ Superpower argues that the Commission should define either three domestic like products, corresponding to dethatchers and sweepers, aerators, and spreaders, or else a single like product extending beyond the scope of the investigations to include dump carts and push lawn grooming equipment.²⁰ For purposes of the preliminary phase of these investigations, and based on the following analysis, we define a single domestic like product coextensive with the scope of these investigations. We intend, however, to examine this issue closely in any final phase of these investigations.

1. Whether There Is a Single Domestic Like Product

a. Petitioner's Argument

Agri-Fab argues that the Commission should define a single domestic like product corresponding to the scope of the investigations defined by Commerce based on both the legislative history underlying the like product concept and the Commission's six like product factors.²¹ Agri-Fab argues that anything other than a single domestic like product coextensive with the scope would "prevent consideration of an industry adversely affected by the imports under consideration," contrary to Congress's instructions, since Agri-Fab accounts for most domestic TBLG production.²²

Agri-Fab argues that there are more similarities than differences among the products. It claims that all TBLGs possess certain shared physical characteristics, such as a steel frame and towing hitch, and have the same general use, which is lawn grooming by means of being towed behind a lawn tractor or similar vehicle.²³ Agri-Fab argues that because it represents most domestic TBLG production and produces all four types of TBLGs in the same facilities with the same employees and production processes, most domestic TBLGs are produced in the same facilities with the same employees and production processes.²⁴ While acknowledging that the four types of TBLGs are not interchangeable with respect to their specific functions, Agri-Fab contends that they do complement one another for the common purpose of promoting healthy lawns.²⁵ Moreover, it notes that combination TBLGs, including spreader/aerators and sweeper/dethatchers, are interchangeable with individual TBLGs performing the same functions (*i.e.*, a combination spreader/aerator is interchangeable with a spreader and an aerator).²⁶ In Agri-Fab's view, customers and producers regard TBLGs as a single like product, since domestic producers market TBLGs to retailers as a single category,²⁷ and retailers employ separate buyers for

¹⁸ CR at I-14; PR at I-12-13.

¹⁹ *See* Petition at 12-24; Agri-Fab's Post-Conference Brief ("PCB") at 4-10.

²⁰ *See* Superpower's PCB at 15-26.

²¹ *See* Petition at 12-17; Agri-Fab PCB at 4-9.

²² Petition at 12 (citing S.Rep. No. 96-249, at 90-91 (1979)).

²³ Petition at 13; Conference Tr. at 12 (Smirnow).

²⁴ Petition at 14.

²⁵ Petition at 14.

²⁶ Petition at 15.

²⁷ As further evidence that domestic producers regard TBLGs as a single category, Agri-Fab notes that most

(continued...)

TBLGs²⁸ and market TBLGs to consumers as a unified product category.²⁹ It maintains that all TBLGs are sold through the same channels of distribution, primarily to large retailers and secondarily direct to consumers.³⁰ Finally, Agri-Fab argues that prices for TBLGs range from \$60 to \$400, with substantial overlap in the price ranges of the four types of TBLGs.³¹

b. Respondent's Argument

Superpower argues that the Commission should define three domestic like products corresponding to sweepers and dethatchers, spreaders, and aerators, based on the “essential character” of each product category.³² The divergent “essential characters” of these three product categories, Superpower contends, are reflected in the differences among the categories under the Commission’s six like product factors.³³ Specifically, it claims that the differing physical characteristics of each category – the tines or forks on sweepers/dethatchers, the hopper on spreaders, and the spike, knife, or blade on aerators – limit each type of TBLG to a specific end use.³⁴ Although all sweepers/dethatchers may be produced in common facilities, Superpower argues, not all domestic producers make sweepers/dethatchers, including ***, which produces only ***.³⁵ It claims that none of the three categories of TBLGs are interchangeable with respect to their specific functions.³⁶ With respect to customer and producer perceptions, Superpower observes that Agri-Fab’s own product catalog divides its lawn grooming products into separate categories, including sweepers (tow and push), spreaders (tow and push), and groomers and rollers (tow and push),³⁷ and asserts that the Commission should organize its domestic like product definitions around these product groupings, thereby expanding the like product beyond the scope of the investigations.³⁸ Finally, Superpower concedes that all TBLGs share the same channel of distribution, but asserts that this fact alone does not justify a single domestic like product.³⁹

²⁷ (...continued)

domestic TBLGs are produced by ***. Petition at 16; CR/PR at Table III-1.

²⁸ Petition at 15-16, 20. As further support, Agri-Fab notes that its 2008 presentation to *** included only TBLGs, although it produces other lawn products such as push lawn groomers. *Id.* at 15.

²⁹ Petition at 15-16; see also Conference Tr. at 16 (Smirnow) (“lawn groomers are sold alongside one another in the same sections of the same home improvement retail stores”).

³⁰ Petition at 16.

³¹ Petition at 16.

³² See Superpower PCB at 15-20.

³³ See Superpower PCB at 21-25.

³⁴ Superpower PCB at 21-22.

³⁵ Superpower PCB at 22-23.

³⁶ Superpower PCB at 23.

³⁷ Superpower PCB at 24.

³⁸ Superpower PCB at 24.

³⁹ Superpower PCB at 25.

c. Analysis⁴⁰

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, riding lawn mower, or similar vehicle.⁴¹ All are a similar size and

⁴⁰ Commissioner Pinkert joins the Commission's finding of one domestic like product consisting of all TBLGs consistent with the scope of the investigations, but notes separately his rationale. In his view, the record regarding the domestic like product issue in this case is unusually complete for the preliminary phase of an investigation, and the currently available information supports finding at least four domestic like products: (1) aerators, (2) dethatchers, (3) sweepers, and (4) spreaders (there is a question whether to treat combination TBLGs as separate products). He declines to make such a finding in this phase of the investigation – which, in any event, would not cause him to make a negative preliminary determination with respect to any domestic like product – because of the possibility that additional information in any final phase (including information submitted in response to purchaser questionnaires) might alter this finding.

There is no genuine question that the four product types differ significantly with respect to physical characteristics and uses – the only factors mentioned in the statute, 19 U.S.C. § 1677(10). As shown in Figures I-1 to I-5 of the Staff Report, CR at I-11 to I-15, although all the products share basic characteristics such as steel construction, a hitch for towing, and wheels and axles, they are actually quite distinct in construction, appearance, and working components. These differences necessarily follow from the products' differing and non-overlapping functions. One would not use an aerator to spread fertilizer, nor would one use a dethatcher to sweep debris off a lawn. Moreover, nearly all domestic producers and importers contacted by the staff reported that the four products are either not at all, or only somewhat, similar in physical characteristics and uses. *Id.* at Table I-2. Responding companies also reported that the four products are not interchangeable, and the majority of such companies reported that customers and producers perceive them to be not at all similar. *Id.* at Tables I-4 and I-5. The products can also be distinguished on the basis of retail price, as there is no price overlap whatsoever between the highest and lowest priced products (sweepers and dethatchers, respectively). *Id.* at I-24. The facts that the different types of TBLGs tend to share manufacturing facilities, processes, and employees and tend to be sold to distributors are outweighed by the dissimilarities in physical characteristics and uses, interchangeability, perceptions, and price.

Petitioner concedes that the different types of TBLGs are not interchangeable in terms of functions, but nevertheless argues that their functions “compliment [sic] one another toward the common purpose of maintaining a healthy lawn.” Conference Tr. at 13. This argument would easily sweep together many types of dissimilar products simply because they serve a single, expansively defined purpose (for example, power saws, drills, hammers, and paint brushes could be lumped together as products used to build houses). Neither the Commission's practice nor the reasoning of any prior case appears to support such a broad approach to defining the domestic like product. The facts here are unlike those in cases in which products with similar physical characteristics and uses vary only in minor ways along a continuum with no clear dividing lines between products. *See, e.g., Certain Steel Nails From China*, Inv. No. 731-TA-1114 (Final), USITC Pub. 4022 (July 2008), at 6. This case also is distinguishable from *Wooden Bedroom Furniture From China*, Inv. No. 731-TA-1058 (Preliminary), Pub. 3667 (Jan. 2004), at 8-9, where a key fact in determining that the many types of bedroom furniture were a single like product was that the purchasers – furniture retailers – viewed the items as parts of coordinated “suites” and marketed them as such. In this case, the evidence presented to date does not support finding that purchasers view the various types of TBLGs as parts of coordinated sets. In addition, the consumption data for the four products appear inconsistent with any finding that they are sold as sets, because their quantities vary greatly, with the consumption of either spreaders or sweepers being more than double that of either aerators or dethatchers. CR at C-2 to C-5. On its present facts, this case appears closer to *Folding Metal Tables And Chairs From China*, Inv. No. 731-TA-932 (Preliminary), USITC Pub. 3431 (June 2001), at 6, where, even though the tables and chairs were sometimes sold together, the Commission found that they “differ physically, have distinct uses, are not interchangeable, and are perceived by customers as distinct products.” The Commission also noted in that case that only a small percentage of sales were in sets and that sales of folding chairs were far greater than sales of folding tables.

⁴¹ CR at I-10; PR at I-9.

shape and incorporate a steel frame, engage/disengage transport handle, two wheels (in most cases), one axle, and the same general parts (e.g., washers, screws, etc.).⁴² All are made primarily of steel.⁴³

The physical differences between specific types of TBLGs correspond to their specific functions. Only aerators have rows of spurs or funnel type knives rotating on an axle, to punch holes in the soil.⁴⁴ Only dethatchers have rows of spring steel tines to dislodge debris packed onto the surface of a lawn.⁴⁵ Only spreaders include a hopper and a mechanism for spreading solid material, such as fertilizer, on the surface of a lawn.⁴⁶ Only sweepers include brushes and a catcher bag, for sweeping and collecting debris off the surface of a lawn for disposal.⁴⁷ Accordingly, the vast majority of both producers and importers that were familiar with the products reported that the four types of TBLGs are only somewhat or not at all similar in terms of their physical characteristics and uses.⁴⁸

TBLGs are designed to complement one another towards the common purpose of maintaining a healthy and attractive lawn.⁴⁹ Moreover, all TBLGs are designed to be used on yards that are large enough to accommodate both TBLGs and their towing vehicle, generally up to five acres in size,⁵⁰ although there does not appear to be a defined lawn size for TBLGs.⁵¹

Interchangeability. Tow-behind aerators, dethatchers, spreaders, and sweepers are typically not interchangeable with respect to their specific functions.⁵² All four types of TBLGs are designed, however, to complement one another in the maintenance of a healthy lawn.⁵³ The Commission has grouped together products within a domestic like product continuum that are not interchangeable with one another for specific end uses.⁵⁴

Producers also manufacture “combination” TBLGs, which combine the functionality of two types of TBLGs into a single unit.⁵⁵ For example, such units may consist of a spreader combined with an aerator or a sweeper combined with a dethatcher.⁵⁶ Combination TBLGs are interchangeable with individual TBLGs that perform the same lawn grooming functions.⁵⁷ Specifically, combination spreader/aerators are interchangeable with spreaders and aerators and combination sweeper/dethatchers

⁴² Petition at 13.

⁴³ CR at I-17; PR at I-15.

⁴⁴ CR at I-10-11; PR at I-9-10.

⁴⁵ CR at I-11-12; PR at I-10-11.

⁴⁶ CR at I-12; PR at I-11-12.

⁴⁷ CR at I-14; PR at I-12-13.

⁴⁸ CR at I-16; PR at I-15; CR/PR at Table I-2.

⁴⁹ CR at I-10; PR at I-9; see also Conference Tr. at 12 (Smirnow) (consumers would “ideally” own all four types of TBLG equipment to optimize the health and appearance of their lawns).

⁵⁰ CR at I-10 & n. 6; PR at I-9 & n. 6 (aerators can be used on lawns larger than five acres); Conference Tr. at 35 (Harshamn) (“We think that our products pretty much fit into the level like a five-acre property.”).

⁵¹ CR at I-10; PR at I-17.

⁵² CR at I-19; PR at I-17; CR/PR at Table I-4.

⁵³ CR at I-10; PR at I-9.

⁵⁴ See, e.g., Wooden Bedroom Furniture from China, Inv. No. 731-TA-1058 (Prelim.), USITC Pub. 3667 (Jan. 2004), at 9-11 (defining a single domestic like product though “the various items of bedroom furniture are . . . not fully interchangeable with one another because they are used for different purposes within the bedroom”); Certain Carbon Flat-Rolled Carbon Steel Products from Argentina et al., Inv. Nos. 701-TA-319-332, 334, 336-342, 344, and 347-53 and 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), USITC Pub. 2664 (Aug. 1993).

⁵⁵ CR at I-15; PR at I-13-14.

⁵⁶ CR at I-15; PR at I-13-14.

⁵⁷ Petition at 15.

are interchangeable with sweepers and dethatchers.⁵⁸ Such combination TBLGs accounted for *** percent of Agri-Fab's TBLG sales in 2007, by value.⁵⁹ We intend to collect additional information on combination TBLGs in any final phase of these investigations.

Common manufacturing facilities, production processes, and production employees. Agri-Fab, which accounted for *** percent of TBLG production over the period of investigation ("POI"), produces all four types of TBLGs in the same facility with the same production employees and equipment.⁶⁰ Producers and importers that were familiar with the products reported that the four types of TBLGs are produced using mostly or somewhat common manufacturing facilities, processes, and employees.⁶¹

Channels of distribution. Producers and importers reported that all TBLGs are fully or mostly distributed through the same channels of distribution,⁶² with *** percent of shipments made to "distributors," which designation, for purposes of these investigations, includes retailers.⁶³ 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, Tractor Supply Company, and Home Depot.⁶⁴

Customer and producer perceptions. Producers generally reported that customers and producers perceive the four types of TBLGs as mostly or fully similar, while importers generally reported that customers and producers perceive the products as not at all similar.⁶⁵ The record in the preliminary phase of these investigations lends support to either conclusion. On the one hand, as noted above, each type of TBLG uses specialized parts to perform a specific lawn grooming function, as reflected in the organization of Agri-Fab's product catalog.⁶⁶ On the other hand, Agri-Fab reports that it markets TBLGs to retailers as a family of complementary products and that retailers typically employ a buyer in charge of purchasing TBLGs, as distinct from other lawn care products.⁶⁷ Moreover, both Agri-Fab and Swisher indicate that retailers market TBLGs to consumers as a family of complementary products.⁶⁸ These factors suggest that at least some customers and producers view the four types of TBLGs as similar in certain respects. We intend to explore this issue further in the final phase of these investigations, and in particular the extent to which the four types of TBLGs are marketed and sold together, or as sets, by retailers.

⁵⁸ Petition at 15; see also Conference Tr. at 14 (Smirnow). For example, a *** proportion of Agri-Fab's sales, *** percent in 2007, consist of combination spreader/aerators and sweeper/dethatchers, which are interchangeable with individual TBLGs performing the same functions. Agri-Fab Responses to Commission Staff Questions at 2; Petition at 15; see also Conference Tr. at 14 (Smirnow).

⁵⁹ Agri-Fab Responses to Commission Staff Questions at 2.

⁶⁰ CR at I-18; PR at I-15; CR/PR at Table III-1. Spyker, which produces *** at its production facility, accounted for *** percent of domestic TBLG production during the POI. Id.

⁶¹ CR at I-18; PR at I-16; CR/PR at Table I-3.

⁶² CR/PR at Table I-6.

⁶³ CR at I-22-23 & n. 29; PR at I-19-20 & n. 29; CR/PR at Table I-7.

⁶⁴ Petition at 16; Superpower PCB at 25; see also Conference Tr. at 26 (Cohan) ("The vast majority of our sales are to home improvement retailers. . ."), 44 (Harshamn), 100 (Duncan: "[C]ontrast the channels of distribution for product that your firm sells, the imported product, versus the experience of U.S. manufacturers . . ."). Swisher: "I'd say they're very similar, very similar.").

⁶⁵ CR at I-20; PR at I-18-19; CR/PR at Table I-5.

⁶⁶ See Petition, Exhibit I-7.

⁶⁷ Petition at 15-16, 20. Agri-Fab reports that its 2008 presentation to *** included only TBLGs. Id. at 15.

⁶⁸ Petition at 15-16; see also Conference Tr. at 16 (Smirnow) ("lawn groomers are sold alongside one another in the same sections of the same home improvement retail stores"), 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).

Price. Producers generally reported that the prices for the four types of TBLGs were mostly similar, while importers generally reported that the prices for the four types of TBLGs were somewhat or not at all similar.⁶⁹ Agri-Fab reports that TBLGs are priced from \$60 to \$400, depending on the type of TBLG and its particular attributes (*i.e.*, size).⁷⁰ 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 in the lower end of the TBLG price range.⁷¹

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 are generally similar with respect to the Commission's three other like product factors. Despite certain physical differences that generally preclude their interchangeability for the same lawn grooming functions, the four types of TBLGs share some broad physical similarities, for the common purpose of promoting the health and appearance of larger residential lawns, up to five acres in size. Although customers and producers perceive the four types of TBLGs as different insofar as they are generally not interchangeable with one another, they also appear to recognize that TBLGs are complementary members of the same family of products, and, according to Agri-Fab, retailers purchase and market TBLGs as such. In addition, the four types of TBLGs are similar in terms of manufacturing facilities, employees, and processes, channels of distribution, and price.

On balance, the limited record in the preliminary phase of these investigations indicates that there appear to be more similarities than differences among the four types of TBLGs. Accordingly, for purposes of the preliminary phase of these investigations, we define a single domestic like product consisting of all TBLGs, coextensive with the scope of the investigations.⁷² 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. We advise parties that written comments on the Commission's draft questionnaires for the final phase of these investigations, submitted pursuant to 19 C.F.R. § 207.20, should in particular address how the Commission should collect data necessary to the resolution of these domestic like product issues.

⁶⁹ CR at I-23; PR at I-20; CR/PR at Table I-8.

⁷⁰ CR/PR at Figure I-8. Agri-Fab reported that sweepers are priced from \$200 to \$400, spreaders from \$60 to \$300, aerators from \$60 to \$300, and dethatchers from \$60 to \$100. Petition at 16-17.

⁷¹ CR/PR at Figure I-8. The price ranges for dethatchers and sweepers do not overlap. *Id.*

⁷² 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.

2. Whether the Domestic Like Product Should Encompass Products Outside the Scope of the Investigations

a. Petitioner's Argument

Agri-Fab argues that the Commission should not expand the like product definition to include products outside the scope of the investigations, such as push or motorized groomers, agricultural implements, ground-engaging attachments, sprayers, or rollers, because, based on an examination of the Commission's six like product factors, these products are unlike TBLGs.

First, in terms of physical characteristics and uses, Agri-Fab claims that agricultural equipment and other ground engaging attachments are unlike TBLGs in that they lack wheels or a hitch and are designed to break up soil, which would destroy a lawn.⁷³ Push groomers are designed to be pushed, not towed, and are only practical for small lawns, not the larger lawns for which TBLGs are used.⁷⁴ Motorized groomers also are designed to be pushed, not towed, while a motor operates the grooming function, and are only economical for commercial applications.⁷⁵ Unlike TBLGs, tow-behind sprayers include a pump, a reservoir, a motor, and a hose with a nozzle and cannot be used to distribute granular material.⁷⁶ Tow-behind rollers have no wheels, sharing only a hitch in common with TBLGs, and are used to improve the appearance, but not the health, of lawns.⁷⁷

Agri-Fab also claims that no product from outside the scope, with the exception of push groomers, shares the same manufacturing facilities, employees, and processes as TBLGs. In this regard, it contends that motorized groomers are produced in different facilities by different employees using different processes, including motor assembly.⁷⁸ Similarly, it maintains that the production of agricultural equipment, ground engaging attachments, sprayers, and rollers entails different components and materials and different processes than the production of TBLGs.⁷⁹

Agri-Fab further claims that no product from outside the scope is interchangeable with TBLGs. Agricultural implements and most types of ground-engaging attachments, it argues, would destroy a lawn.⁸⁰ Motorized groomers are too large and expensive to substitute economically for TBLGs, while push groomers could not practically be used to groom the same size lawns as TBLGs.⁸¹ Sprayers can apply fertilizer to lawns but not in granular form, like a TBLG.⁸²

In terms of customer and producer perceptions, Agri-Fab argues that no other product is perceived to belong within the same product category as TBLGs. It notes that retailers maintain separate buyers for TBLGs and push lawn groomers and that consumers perceive push lawn groomers as suitable only for smaller lawns.⁸³ Motorized groomers, it claims, are not generally carried by the same retailers

⁷³ Petition at 18.

⁷⁴ Petition at 18, 20; Conference Tr. at 14-15 (Smirnow). Agri-Fab claims that TBLGs are suitable for yards five acres or less in size. See id. at 36 (Harshamn).

⁷⁵ Petition at 18-19; Conference Tr. at 14 (Smirnow).

⁷⁶ Agri-Fab PCB at 5.

⁷⁷ Agri-Fab PCB at 5.

⁷⁸ Petition at 18-19. Agri-Fab notes that it produces no motorized TBLGs, id., and knows of no producer that produces both TBLGs and motorized lawn groomers. Agri-Fab PCB at 6.

⁷⁹ Agri-Fab PCB at 6.

⁸⁰ Petition at 18-19; Agri-Fab PCB at 7.

⁸¹ Petition at 19-20; Conference Tr. at 14 (Smirnow).

⁸² Agri-Fab PCB at 7.

⁸³ Petition at 20.

that sell TBLGs, except sometimes for rental.⁸⁴ It claims that agricultural implements and other ground engaging attachments are viewed as suitable for raising crops, not for grooming lawns,⁸⁵ and are sold by agricultural equipment suppliers rather than by home improvement retailers.⁸⁶ Finally, Agri-Fab claims that producers and customers view sprayers and rollers as distinct from TBLGs, based on their differing uses.⁸⁷

Agri-Fab argues that no other product is sold through exactly the same channels of distribution as TBLGs. In this regard, it reiterates that motorized groomers, agricultural implements, and other ground-engaging attachments are generally sold by separate retailers.⁸⁸ Although TBLGs and push groomers are sold by the same retailers, it claims that the two categories of products are sold by different sales personnel and thus through different channels within the same retailers.⁸⁹

Finally, Agri-Fab claims that products from outside the scope are priced differently than TBLGs. In particular, it notes that push groomers are smaller than TBLGs and thus cheaper, whereas motorized groomers, agricultural implements, and ground-engaging equipment are larger than TBLGs and thus more expensive.⁹⁰ It also claims that sprayers are more expensive than TBLGs, although rollers are priced within a similar range.⁹¹

b. Respondent's Argument

Superpower argues that if the Commission were to define a single domestic like product, the definition should extend to products outside the scope of the investigations that share key features with TBLGs, including dump carts, push spreaders, and other groomers.⁹² As an example, Superpower claims that dump carts share all of the key features of TBLGs identified by Agri-Fab, such as a steel frame, towing hitch, engage/disengage transport handle, and single axle and are designed, like TBLGs, to promote healthy lawns.⁹³ It also notes that push spreaders have the same physical characteristics as tow-behind spreaders, save for the location of the handle and the absence of a hitch, and the same end use.⁹⁴

c. Analysis

Physical characteristics and uses. The degree to which products from outside the scope of the investigations share similar physical characteristics and uses with TBLGs depends on the product. Agricultural equipment and other ground-engaging attachments are unlike TBLGs in that they lack wheels or a hitch and are designed to break up soil, which would destroy a lawn.⁹⁵

Push groomers share certain physical characteristics and uses with TBLGs, performing the same functions as TBLGs.⁹⁶ Agri-Fab contends that push groomers are only practical for smaller lawns, not the

⁸⁴ Petition at 20.

⁸⁵ Petition at 20.

⁸⁶ Agri-Fab PCB at 8.

⁸⁷ Agri-Fab PCB at 8.

⁸⁸ Petition at 20-21.

⁸⁹ Petition at 21.

⁹⁰ Petition at 22; Agri-Fab PCB at 9; Conference Tr. at 14 (Snirnow) (motorized groomers start at \$1,000).

⁹¹ Agri-Fab PCB at 9.

⁹² Superpower PCB at 25.

⁹³ Superpower PCB at 25-26.

⁹⁴ Superpower PCB at 17-18.

⁹⁵ Petition at 18.

⁹⁶ Petition at 18, 20; Conference Tr. at 14-15 (Smirnow).

larger lawns for which TBLGs are generally used.⁹⁷ Similarly, motorized groomers perform the same functions as TBLGs, but are designed to be pushed, not towed, and are only economical for heavy-duty commercial applications.⁹⁸

Tow-behind carts, sprayers, and rollers possess a hitch for towing behind a lawn tractor, riding lawn mower, or similar vehicle, like TBLGs, but are otherwise distinguishable from TBLGs in terms of their physical characteristics and uses. Carts, whether tow-behind or push, are used to transport refuse, move sand, and dump gravel, among other tasks, but not to groom lawns.⁹⁹ Tow-behind sprayers include a pump, a reservoir, a motor, and a hose with a nozzle, unlike TBLGs, and cannot be used to distribute granular material.¹⁰⁰ Tow-behind rollers have no wheels, sharing only a hitch in common with TBLGs, and cannot perform the same functions as TBLGs.¹⁰¹

Interchangeability. Products from outside the scope of the investigations are generally not interchangeable with TBLGs from a practical perspective. As already noted, agricultural implements and most types of ground-engaging attachments would destroy a lawn.¹⁰² Motorized groomers are too large and expensive to substitute economically for TBLGs.¹⁰³ Rollers cannot perform the function of any TBLG, and carts perform no lawn grooming function at all.

There is, however, a limited degree of interchangeability between TBLGs, on the one hand, and push groomers and tow-behind sprayers, on the other. Although push groomers could not practically be used to groom the same larger-size lawns as TBLGs, Agri-Fab has indicated that some consumers with smaller lawns purchase TBLGs instead of push groomers.¹⁰⁴ Sprayers can apply fertilizer to lawns, like tow-behind spreaders, though not in granular form.¹⁰⁵

Common manufacturing facilities, production processes, and production employees. There are similarities and differences between TBLGs and products outside the scope of the investigations in terms of their manufacturing facilities, employees, and processes.¹⁰⁶ Motorized groomers are produced in different facilities by different employees using different processes, including motor assembly.¹⁰⁷ Yet, Agri-Fab apparently produces certain agricultural equipment, ground-engaging attachments, sprayers, rollers, and carts, in the same facility with the same employees as TBLGs, though with different components, materials, and processes.¹⁰⁸ Agri-Fab concedes that push groomers and TBLGs share the same facilities and employees, and many of the same production processes.¹⁰⁹

⁹⁷ Petition at 18, 20; Conference Tr. at 14-15 (Smirnow). Agri-Fab claims that TBLGs are suitable for yards five acres or less in size. See *id.* at 36 (Harshamm).

⁹⁸ Petition at 18-19; Conference Tr. at 14 (Smirnow).

⁹⁹ See Petition, Exhibit I-7 at 2.

¹⁰⁰ Agri-Fab PCB at 5.

¹⁰¹ Agri-Fab PCB at 5.

¹⁰² Petition at 18-19; Agri-Fab PCB at 7. Agri-Fab acknowledges that a rake harrow, a ground-engaging attachment designed to smooth soil and other surfaces, could be used to dethatch a lawn, but contends that it would not be nearly as effective as a TBLG because it lacks flexible spring steel tines. *Id.*

¹⁰³ Petition at 19-20; Conference Tr. at 14 (Smirnow).

¹⁰⁴ Petition at 19-20; Conference Tr. at 14 (Smirnow) (impractical to use push groomers on larger yards), 37 (Harchman) (“Actually, it would surprise you, but people buy [TBLGs] and use them on very small plots.”).

¹⁰⁵ Agri-Fab PCB at 7.

¹⁰⁶ Petition at 19.

¹⁰⁷ Petition at 18-19. Agri-Fab notes that it produces no motorized TBLGs, *id.*, and knows of no producer that produces both TBLGs and motorized lawn groomers. Agri-Fab PCB at 6.

¹⁰⁸ See Petition at Exhibit I-7 (Agri-Fab catalog listing agricultural equipment, ground engaging attachments, sprayers, rollers, and carts); Agri-Fab PCB at 6.

¹⁰⁹ Petition at 19. Agri-Fab makes push lawn groomers. *Id.*

Channels of distribution. Motorized groomers, agricultural implements, and other ground-engaging attachments are generally sold by separate retailers, which do not sell TBLGs.¹¹⁰ TBLGs, carts, rollers, and push groomers, however, are sold by the same retailers, and thus share similar channels of distribution.¹¹¹

Customer and producer perceptions. There is limited information on this factor in these preliminary investigations, particularly with respect to customer perceptions. Customer and producer perceptions of TBLGs and products from outside the scope of the investigations appear to vary depending on the product. According to Agri-Fab, customers and producers perceive agricultural implements and other ground engaging attachments as different from TBLGs, in that they are suitable for raising crops but not for grooming lawns.¹¹² Agri-Fab also claims that customers and producers would view motorized groomers as separate and distinct from TBLGs in that they are much larger and more expensive than TBLGs, reserved for commercial applications, and sold by different retailers.¹¹³ They would view carts as different from TBLGs in that they perform no lawn grooming functions.

On the other hand, customers and producers probably perceive sprayers, rollers, and push groomers as somewhat similar to TBLGs. Both sprayers and rollers can be towed, like TBLGs, and perform lawn grooming functions. Push groomers perform the same lawn grooming functions as TBLGs, but on a smaller scale.¹¹⁴ Moreover, Agri-Fab has indicated that consumers with smaller yards suitable for push groomers sometimes purchase TBLGs.¹¹⁵

Price. Agri-Fab claims that push groomers are smaller than TBLGs and thus cheaper, whereas motorized groomers, agricultural implements, and ground-engaging equipment are larger than TBLGs and thus more expensive.¹¹⁶ It also claims that sprayers are more expensive than TBLGs, although rollers are priced within a similar range.¹¹⁷ The record contains no pricing information on carts.

Conclusion. Based on the limited information on the record of the preliminary phase of these investigations, it appears that TBLGs differ somewhat from motorized groomers, agricultural implements, ground-engaging attachments, and carts in terms of the Commission's six like product factors. Although there are certain similarities between TBLGs and push groomers, sprayers, and rollers in terms of physical characteristics, uses, channels of distribution, customer and producer perceptions, and manufacturing facilities, employees, and processes, there also are some differences between the products. Push groomers cannot be towed behind a lawn tractor, lawn mower, or similar vehicle and therefore cannot be used to groom larger yards, which is the principal function of TBLGs. Sprayers and rollers possess many components not found on TBLGs and cannot perform the same functions as TBLGs. In addition, push groomers and sprayers are priced differently than TBLGs.

In sum, based on the limited record in the preliminary phase of these investigations, the differences between TBLGs and products from outside the scope of the investigations appear to be such that a reasonable dividing line can be drawn separating TBLGs from products outside the scope. We therefore do not define the domestic like product to include push or motorized groomers, agricultural implements, ground-engaging attachments, sprayers, rollers, or carts for purposes of the preliminary phase of these investigations. We will explore this issue further in the final phase of these investigations,

¹¹⁰ Petition at 20-21.

¹¹¹ Petition at 21.

¹¹² Petition at 20.

¹¹³ Petition at 20.

¹¹⁴ Petition at 20.

¹¹⁵ See Conference Tr. at 37 (Harchman) (“Actually, it would surprise you, but people buy [TBLGs] and use them on very small plots.”).

¹¹⁶ Petition at 22; Agri-Fab PCB at 9; Conference Tr. at 14 (Smirnow) (motorized groomers start at \$1,000).

¹¹⁷ Agri-Fab PCB at 9.

particularly with respect to customer and producer perceptions of the products and whether to include push lawn groomers within the domestic like product.

IV. 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.”¹¹⁸ 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, we define the domestic industry as all domestic producers of TBLGs, including Agri-Fab, Brinly Hardy, Ohio Steel Industries, and Spyker Spreaders.¹¹⁹

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.¹²⁰ Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each investigation. One domestic producer, ***, is a related party because it was an importer of subject merchandise from China during the POI,¹²¹ and as discussed below, we determine to exclude it from the domestic industry.

1. Petitioner’s Argument¹²²

Agri-Fab argues that *** is a related party that should be excluded from the domestic industry because during the period examined it changed from being a domestic producer of TBLGs to an importer of TBLGs from China.¹²³ Agri-Fab claims that *** virtually abandoned domestic production in favor of TBLGs from China in 2006, with its domestic production of TBLGs declining to *** units by the first quarter of 2008 and its projected imports of TBLGs from China increasing to *** units during April-September 2008.¹²⁴

2. Analysis

We find that circumstances warrant the exclusion of related party *** from the domestic industry for the following reasons. First, *** demonstrated a waning commitment to domestic production during the POI, as its domestic production declined from *** units in 2005 to *** units in 2007, and was ***

¹¹⁸ 19 U.S.C. § 1677(4)(A).

¹¹⁹ CR at Table III-1.

¹²⁰ 19 U.S.C. § 1677(4)(B).

¹²¹ See CR at Table III-9; 19 U.S.C. § 1677(4)(B).

¹²² Superpower did not address the issue of related parties. See Superpower’s Responses to Commission Staff Questions at B.

¹²³ Agri-Fab’s PCB at 10-11.

¹²⁴ Agri-Fab’s PCB at 11; ***.

units in January-March 2008, compared to *** units in January-March 2007.¹²⁵ Concurrently, *** increased its imports of TBLGs from China from *** units in 2005 to *** units in 2006 and *** units in 2007, and will import a projected *** units in 2008.¹²⁶ *** ratio of imports to domestic production increased from *** percent in 2005 to *** percent in 2007.¹²⁷ Thus, as of the end of the POI, *** primary interest was in importing TBLGs from China. We also note that it ***.¹²⁸

Moreover, *** appears to have benefitted from its importation of allegedly dumped and subsidized TBLGs from China.¹²⁹ ¹³⁰ In this regard, *** increased as its imports of TBLGs from China increased over the course of the POI, to a level *** than that of other domestic producers.¹³¹ *** does not indicate that it must import in order to continue domestic production, though it does contend that ***.¹³²

In sum, we find that circumstances warrant the exclusion of *** from the domestic industry as a related party.

V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF IMPORTS OF SUBJECT MERCHANDISE FROM CHINA¹³³

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.¹³⁴ 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.¹³⁵ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or

¹²⁵ CR at Table III-9.

¹²⁶ CR at Table III-9; Importers Questionnaire Response of *** at Question II-3.

¹²⁷ CR/PR at Table III-8.

¹²⁸ CR/PR at Table III-1. ***. *Id.*

¹²⁹ 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 preliminary phase of these investigations, Chairman Aranoff finds that appropriate circumstances exist to exclude *** from the domestic industry.

¹³⁰ For purposes of the preliminary phase of these investigations, 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 and relies instead on other information relevant to this issue. The present 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). For the final phase of these investigations, Commissioner Pinkert invites the parties to provide any information they may have with respect to whether this company is benefitting financially from its status as a related party.

¹³¹ See CR at Tables III-1, VI-2. In 2007, for example, ***. CR at Table VI-2.

¹³² See Domestic Producers Questionnaire Response of *** at Question III-15 (***).

¹³³ 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-2. As such, we find that subject imports are not negligible under 19 U.S.C. § 1677(24).

¹³⁴ 19 U.S.C. §§ 1671b(a), 1673b(a).

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

unimportant.”¹³⁶ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.¹³⁷ 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.”¹³⁸

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

A. Conditions of Competition

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

1. Demand Conditions

TBLG demand is largely a function of the overall economy, consumers’ discretionary income, and weather conditions, but is also influenced by the housing market.¹³⁹ Although the recent 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.¹⁴⁰ TBLG purchases are also seasonal, with most TBLG sales concentrated in the January-May period, a leveling off of TBLG sales in the summer months, and a slight increase in sweeper sales in the fall.¹⁴¹

Apparent U.S. consumption of TBLGs increased *** percent between 2005 and 2007, from *** units to *** units, but was *** lower in January-March 2008, at *** units, than in January-March 2007, at *** units.¹⁴² *** of *** domestic producers reported that TBLG demand had *** since January 2005, generally citing the weakness of the housing market and decreased sales of lawn equipment.¹⁴³ ***, however, reported that demand had increased due to rural development.¹⁴⁴ All importers reported that TBLG demand had declined since January 2005, citing the housing market, general economic conditions, and decreased sales of lawn equipment.¹⁴⁵

¹³⁶ 19 U.S.C. § 1677(7)(A).

¹³⁷ 19 U.S.C. § 1677(7)(C)(iii).

¹³⁸ 19 U.S.C. § 1677(7)(C)(iii).

¹³⁹ CR at II-4; PR at II-3; see also Superpower PCB at 4-5.

¹⁴⁰ CR at II-4-5; PR at II-3-4; Petition at 28-29; Conference Tr. at 38 (Harvey) (stating that TBLG demand tracks housing demand to a certain extent and the downturn in the housing market during 2007 and 2008 “had a negative impact on the [TBLG] market, to some degree”).

¹⁴¹ CR at II-5; PR at II-3.

¹⁴² CR/PR at Table IV-6.

¹⁴³ CR at II-5; PR at II-3 (excluding ***).

¹⁴⁴ CR at II-5; PR at II-3.

¹⁴⁵ CR at II-5; PR at II-3.

2. Supply Conditions

a. Domestic Capacity

Agri-Fab and Brinly Hardy were *** domestic producers during the POI, accounting for *** percent and *** percent of domestic TBLG production, respectively.¹⁴⁶ Spyker Spreaders, ***, accounted for *** percent of domestic TBLG production over the period.¹⁴⁷ Domestic TBLG capacity remained fairly constant during the POI, increasing *** from *** units in 2005 to *** units in 2006 and then declining *** to *** units in 2007.¹⁴⁸ Domestic TBLG capacity was *** lower in January-March 2008, at *** units, than in January-March 2007, at *** units.¹⁴⁹

b. Substitutability

The record indicates that there is a high degree of substitutability between TBLGs of the same type, regardless of the source. Most domestic producers, and a slight majority of importers, reported that subject imports are always or frequently interchangeable with the domestic like product.¹⁵⁰ Indeed, Agri-Fab claims that subject imported TBLGs are exact copies of its own TBLGs.¹⁵¹ Domestic producers reported that the quality of TBLGs from China, though initially problematic, improved significantly over the POI, and one importer, ***, claimed that its TBLGs imported from China were qualitatively superior to domestic TBLGs.¹⁵² In addition, one domestic producer indicated that non-subject imports from Mexico, which ***, are always interchangeable with the domestic like product.¹⁵³

The record also indicates that price is an important consideration, but by no means the only consideration, in purchasing decisions.¹⁵⁴ Half of domestic producers reported that differences other than price are sometimes significant, while a slight majority of importers reported that differences other than price, such as lead time and availability, are frequently significant.¹⁵⁵

¹⁴⁶ CR/PR at Table III-1.

¹⁴⁷ CR/PR at Table III-1.

¹⁴⁸ CR/PR at Table Supplemental C-1.

¹⁴⁹ CR/PR at Table Supplemental C-1.

¹⁵⁰ CR at II-10; PR at II-5; CR/PR at Table II-2.

¹⁵¹ Petition at 29-30, Exhibit I-24; Agri-Fab PCB at 13. Agri-Fab reports that it dispatched employees to China in 2003 at the invitation of a Chinese producer of TBLGs and observed the company producing what appeared to be copies of Agri-Fab's products. Conference Tr. at 25 (Cohan); Agri-Fab PCB at 14. It later learned that the producer had reverse-engineered Agri-Fab's products from pictures and samples. Conference Tr. at 25 (Cohan).

¹⁵² CR at II-9-10; PR at II-6.

¹⁵³ CR at II-11-12; PR at II-6.

¹⁵⁴ See CR at II-9; PR at II-5. Agri-Fab contends that subject imports have caused a "paradigm shift" in the TBLG market, making price the primary, if not the exclusive, factor in purchasing decisions, when for 30 years prior, purchasing decisions in the TBLG market had been predicated on both price and non-price factors, such as technical and warranty support, customer service, product availability, and product range. Conference Tr. at 27-28 (Cohan); Agri-Fab PCB at 16. In any final phase of these investigations, we will explore the extent to which purchasers have focused increasingly on price to the exclusion of other product characteristics.

¹⁵⁵ CR at II-9-10; PR at II-5-6.

c. Non-Subject Imports

The only non-subject imports during the POI consisted entirely of *** imported from Mexico ***.¹⁵⁶ Non-subject import shipments increased from *** units in 2005, or *** percent of apparent U.S. consumption, to *** units in 2006, or *** percent of apparent U.S. consumption, and to *** units in 2007, or *** percent of apparent U.S. consumption.¹⁵⁷ Non-subject import shipments declined when the interim periods are compared, however, from *** units in January-March 2007, or *** percent of apparent U.S. consumption, to *** units in January-March 2008, or *** percent of apparent U.S. consumption.¹⁵⁸

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.”¹⁵⁹

Both subject import volume and market share increased significantly over the period of investigation. Subject import volume increased *** percent between 2005 and 2007, from *** units in 2005, or *** percent of apparent U.S. consumption, to *** units in 2006, or *** percent of apparent U.S. consumption, and *** units in 2007, or *** percent of apparent U.S. consumption.¹⁶⁰ Subject imports were *** percent higher in January-March 2008, at *** units or *** percent of apparent U.S. consumption, than in January-March 2007, at *** units or *** percent of apparent U.S. consumption.¹⁶¹ That the volume of subject imports was *** percent greater in January-March 2008 than in January-March 2007 is particularly notable given that apparent U.S. consumption was *** percent lower when the same periods are compared.^{162 163}

The *** percentage points of market share that subject imports captured between 2005 and 2007 came at the expense of the domestic industry, as did a significant portion of the *** percentage points of market share that subject imports captured between January-March 2007 and January-March 2008.¹⁶⁴ As subject imports displaced domestic TBLGs in the U.S. market, the ratio of subject imports to domestic production increased significantly, from *** percent in 2005 to *** percent in 2006 and *** percent in 2007.¹⁶⁵ The ratio of subject imports to domestic production was higher in January-March 2008 (*** percent) than in January-March 2007 (*** percent).¹⁶⁶

¹⁵⁶ CR at VII-7-8; PR at VII-4.

¹⁵⁷ CR/PR at Table IV-6.

¹⁵⁸ CR/PR at Table IV-6.

¹⁵⁹ 19 U.S.C. § 1677(7)(C)(i).

¹⁶⁰ CR/PR at Table C-1.

¹⁶¹ CR/PR at Table C-1.

¹⁶² CR/PR at Table IV-6.

¹⁶³ Although non-subject import volume and market share also increased between 2005 and 2007, non-subject imports were comprised ***, and non-subject import volume and market share declined *** in interim 2008 compared to interim 2007. See CR/PR at Table IV-8; CR at VII-7-8. Moreover, ***. Agri-Fab PCB at 15.

¹⁶⁴ CR/PR at Table C-1. Between January-March 2007 and January-March 2008, non-subject imports lost *** percentage points of market share, and the domestic industry lost *** percentage points of market share. See *id.*

¹⁶⁵ CR/PR at Table IV-8.

¹⁶⁶ CR/PR at Table IV-8.

For purposes of the preliminary phase of these investigations, we find 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.¹⁶⁷

As addressed in section V.A.2.B. 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 in purchasing decisions.¹⁶⁸ 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 revenues, acknowledged that they switched their purchases from the domestic like product to subject imports due to price.¹⁶⁹

*** domestic producers and *** importers provided usable quarterly net U.S. f.o.b. selling price data for seven products, although not all firms reported pricing for all products for all quarters.¹⁷⁰ Pricing data reported in the preliminary phase of these investigations by these firms 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.¹⁷¹ These data indicate that subject imports pervasively undersold the domestic like product throughout the period of investigation, with the exception of products *** and ***.¹⁷²

Specifically, between the first quarter of 2005 and the first quarter of 2008, subject imports undersold the domestic like product in *** of *** quarterly comparisons, or *** percent of the time, at margins ranging from *** percent to *** percent.¹⁷³ Subject imports generally oversold the domestic like product, however, with respect to products *** and ***, at margins ranging from *** to *** percent, and these two products accounted for *** quarterly instances of subject import overselling.¹⁷⁴ Conversely, subject imports undersold the domestic like product in *** quarterly comparisons, *** of *** quarters, with respect to products ***.¹⁷⁵ For purposes of the preliminary phase of these investigations, we find subject import underselling to be significant.

¹⁶⁷ 19 U.S.C. § 1677(7)(C)(ii).

¹⁶⁸ See CR at II-9-11; PR at II-5-7; CR/PR at Table II-2.

¹⁶⁹ CR at V-20; PR at V-7-8.

¹⁷⁰ CR at V-3-4; PR at V-4. Although we have excluded *** from the domestic industry as a related party, we have not excluded its pricing product data from our pricing analysis because these data are not significant. Specifically, *** reported pricing data for ***. Because no subject import pricing data was reported for ***, *** pricing data could have no effect on our analysis of subject import underselling.

¹⁷¹ See CR at V-4; PR at V-4.

¹⁷² See CR/PR at Tables V-8-9.

¹⁷³ CR/PR at Table V-9.

¹⁷⁴ CR/PR at Table V-9.

¹⁷⁵ CR/PR at Table V-9.

Although domestic prices were higher in the first quarter of 2008 than they had been in the first quarter of 2005 and generally fluctuated within a narrow band over the POI,¹⁷⁶ we find some indication that pervasive subject import underselling suppressed domestic prices, preventing price increases that otherwise would have occurred due to escalating raw material costs.¹⁷⁷ Domestic producers reported that their costs for steel increased by *** to *** percent since 2005 and that their costs for tires and wheels increased by *** to *** percent over the same period.¹⁷⁸ Because the domestic industry was unable to increase its prices sufficiently to cover its increased raw material costs, the ratio of domestic industry cost of goods sold (“COGS”) to net sales increased from *** percent in 2005 to *** percent in 2007 and was higher in January-March 2008, at *** percent, than in January-March 2007, at *** percent.¹⁷⁹ While we recognize that apparent U.S. consumption was *** percent lower in January-March 2008 than in January-March 2007, we find, on balance, an indication of significant price suppression for purposes of the preliminary phase of these investigations. We intend to explore the issue of price suppression further in the final phase of these investigations.

The principal adverse impact of subject import underselling appears to have been its significant contribution to the *** percentage point market share shift from domestic producers to subject imports between 2005 and 2007 and the *** percentage point shift between January-March 2007 and January-March 2008.¹⁸⁰ We base this finding on the high degree of substitutability between subject imports and the domestic like product within TBLG types, the importance of price to purchasing decisions, and the pervasiveness of subject import underselling during the POI.

Although *** lost sales and lost revenue allegations were ***, the record in this regard is consistent with our finding that subject import underselling significantly contributed to the domestic industry’s loss of market share to subject imports. *** purchasers partially confirmed domestic producers’ lost sales allegations totaling *** units and \$*** insofar as they acknowledged that they switched from the domestic like product to subject imports due to price.¹⁸¹ Lowe’s denied domestic producers’ specific lost sales allegations totaling *** units and \$***, stating that its purchasing decisions were predicated on many factors other than price.¹⁸² We note, however, that Lowe’s reported that its delivered purchase prices for subject imports were *** to *** percent *** its delivered purchase prices for comparable domestic TBLGs.¹⁸³

For the foregoing reasons, we find that the subject imports have had significant adverse price effects on the domestic industry.

¹⁷⁶ See CR/PR at Tables V-1-7, Figures V-2-8.

¹⁷⁷ We note that subject import volume was *** percent higher in January-March 2008, as compared to January-March 2007, notwithstanding the fact that apparent U.S. consumption was *** percent lower. See CR/PR at Table IV-6.

¹⁷⁸ CR at V-1; PR at V-1.

¹⁷⁹ CR/PR at Table Supplemental VI-1. We note that the increased cost of raw materials accounted for *** of the domestic industry’s increased COGS during the POI. See *id.*

¹⁸⁰ CR/PR at Table IV-6.

¹⁸¹ CR at V-20, 23-24; PR at V-7-8; CR/PR at Table V-10.

¹⁸² CR at V-22-23 & n. 11; PR at V-7-8 & n. 11.

¹⁸³ CR/PR at Tables D-1-5.

D. Impact of the Subject Imports¹⁸⁴

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”¹⁸⁵ 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.”¹⁸⁶

We find that subject imports had a significant adverse impact on the condition of the domestic industry over the period of investigation. As addressed above, subject import volume increased *** percent between 2005 and 2007, capturing *** percentage points of market share from domestic producers.¹⁸⁷ Subject import volume was *** percent higher in January-March 2008 than in January-March 2007, capturing *** percentage points of market share from domestic producers.¹⁸⁸ Pervasive subject import underselling significantly drove this shift in market share from the domestic industry to subject imports. Consequently, the domestic industry experienced declines in almost every statutory performance indicator during the period of investigation.

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 declined from *** percent in 2005 to *** percent in 2006 and *** percent in 2007, and was *** percent in January-March 2007 compared to *** percent in January-March 2008.¹⁸⁹ At the same time, its U.S. shipments declined *** percent between 2005 and 2007, from *** units in 2005 to *** units in 2006 and *** units in 2007, and were *** percent lower in January-March 2008, at *** units, than in January-March 2007, at *** units.¹⁹⁰ The domestic industry’s net sales quantity declined *** percent between 2005 and 2007, from *** units in 2005 to *** units in 2006 and *** units in 2007, and was *** percent lower in January-March 2008, at *** units, than in January-March 2007, at *** units.¹⁹¹

¹⁸⁴ In its notice of initiation for the antidumping duty investigation, Commerce estimated the dumping margin for subject imports from China to be 154.72 percent ad valorem. CR at I-4; PR at I-3; see also 73 Fed. Reg. 42315 (July 21, 2008). In its notice of initiation for the countervailing duty investigation, Commerce indicated that it was going to investigate 28 programs alleged in the petition to have provided countervailable subsidies to producers of TBLGs in China. CR at I-4; PR at I-3; see also 73 Fed. Reg. 42324 (July 21, 2008). Commerce grouped the programs into the following categories: preferential income tax programs at the national level, value added tax and indirect tax programs at the national level, the provision of hot-rolled steel at less than adequate remuneration, income tax programs at the provincial or local levels, preferential policies and benefits to firms located in Shandong Province, preferential policies and benefits to firms located in Qingdao Municipality, and preferential policies and benefits to firms located in the Lingang Processing Industrial Zone in Qingdao Municipality. See id.

¹⁸⁵ 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.”)

¹⁸⁶ 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).

¹⁸⁷ CR/PR at Table IV-6.

¹⁸⁸ CR/PR at Table IV-6.

¹⁸⁹ CR/PR at Table IV-6.

¹⁹⁰ CR/PR at Table Supplemental C-1.

¹⁹¹ CR/PR at Table Supplemental C-1. The domestic industry’s net sales quantity declined *** less than its U.S. shipments due to a *** increase in exports over the period. See id. Domestic industry exports increased *** percent between 2005 and 2007, from *** units in 2005 to *** units in 2007, and were *** higher in January-March 2008,

(continued...)

Because the domestic industry's production declined but capacity remained essentially stable, the domestic industry's capacity utilization rate declined *** over the period of investigation. Specifically, capacity fluctuated within a narrow range during the period, increasing *** from *** units in 2005 to *** units in 2006, before declining *** to *** units in 2007, and was *** units in January-March 2007 compared to *** units in January-March 2008.¹⁹² Production declined *** percent between 2005 and 2007, from *** units in 2005 to *** units in 2006 and *** units in 2007, and was *** percent lower in January-March 2008, at *** units, than in January-March 2007, at *** units.¹⁹³ As a result, capacity utilization declined from *** percent in 2005 to *** percent in 2006 and *** percent in 2007, and was *** percent in January-March 2007 compared to *** percent in January-March 2008.¹⁹⁴ The domestic industry's average number of production workers declined *** percent between 2005 and 2007, from *** to ***, and was *** percent lower in January-March 2008, at ***, than in January-March 2007, at ***.¹⁹⁵ Its labor productivity declined from *** units per thousand hours in 2005 to *** units per thousand hours in 2007, but was higher in January-March 2008, at *** units per thousand hours, than in January-March 2007, at *** units per thousand hours, ***.¹⁹⁶

The domestic industry's financial performance deteriorated as well. The industry's net sales value declined *** percent between 2005 and 2007, from \$*** in 2005 to \$*** in 2006 and \$*** in 2007, and was *** percent lower in January-March 2008, at \$***, than in January-March 2007, at \$***.¹⁹⁷ Its operating income declined from \$*** (or *** percent of sales) in 2005 to \$*** (or *** percent of sales) in 2006, before increasing *** to \$*** (or *** percent of sales) in 2007, a level still *** below that in 2005.¹⁹⁸ The domestic industry's operating profit in January-March 2008, \$*** (or *** percent of sales), was down from January-March 2007, at \$*** (or *** percent of sales).¹⁹⁹ This *** in domestic industry profitability in January-March 2008 is particularly significant in light of the fact that TBLG sales are traditionally highest in the January-May period of each year.²⁰⁰ Other measures of the domestic industry's financial condition, including capital expenditures and the industry's return on investment, also declined significantly over the period, although R&D expenditures increased.²⁰¹

¹⁹¹ (...continued)

at *** units, than in January-March 2007, at *** units. See id. Domestic industry inventories declined from *** units in 2005, or *** percent of shipments, to *** units in 2007, or *** percent of shipments, but were higher as a percentage of shipments in January-March 2008, at *** units or *** percent of shipments, than in January-March 2007, at *** units or *** percent of shipments. See id.

¹⁹² CR/PR at Table Supplemental C-1.

¹⁹³ CR/PR at Table Supplemental C-1.

¹⁹⁴ CR/PR at Table Supplemental C-1.

¹⁹⁵ CR/PR at Table Supplemental C-1.

¹⁹⁶ CR/PR at Table Supplemental C-1.

¹⁹⁷ CR/PR at Table Supplemental C-1.

¹⁹⁸ CR/PR at Table Supplemental C-1.

¹⁹⁹ CR/PR at Table Supplemental C-1.

²⁰⁰ See CR at II-5.

²⁰¹ See CR/PR at Table Supplemental C-1. The domestic industry's capital expenditures *** at \$*** in 2005, declined to \$*** in 2006, and increased *** to \$*** in 2007, a level still *** percent below that in 2005. Id. However, capital expenditures were higher in January-March 2008, at \$***, than in January-March 2007, at \$***. Id. *** domestic producers reported that subject imports had actual negative effects on their growth, investment, ability to raise capital development and production efforts, and the scale of capital investments, with *** reporting *** and *** reporting ***. CR at VI-9-10; PR at VI-1-2. The domestic industry's return on investment declined from *** percent in fiscal year 2005 to *** percent in fiscal year 2006 before increasing *** to *** percent in fiscal year 2007, a level still *** below that of 2005. CR/PR at Table VI-5. Bucking these trends, the domestic industry's R&D expenditures increased from \$*** in 2005 to \$*** in 2007 and were \$*** in January-March 2007 and \$*** in

(continued...)

As previously noted, we find that the increased volumes of low-priced subject imports contributed significantly to these adverse domestic industry trends. The domestic industry's declining production and sales volume over the period, due in large part to subject import competition, depressed its capacity utilization rate, labor productivity, employment, revenues, and operating income.²⁰² In addition, there is some evidence that subject imports suppressed domestic prices, during a period of escalating raw material costs.²⁰³

We are unpersuaded by Superpower's argument that the domestic industry's declining performance resulted entirely from factors unrelated to imports. The record provides no support for Superpower's claim that the TBLG market is in a secular decline due to factors such as the aging population, climate change, zero-turn mowers, or mulching mowers,²⁰⁴ particularly given that apparent U.S. consumption increased *** percent between 2005 and 2007.²⁰⁵ While TBLG demand did soften with the decline in the general economy in late 2007 and early 2008, we note that the domestic industry's performance had already begun to deteriorate during 2005-2007 and that the deterioration during that period took place despite strengthening TBLG demand.²⁰⁶ The record in these investigations indicates that the domestic industry's difficulties began when subject imports began capturing significant market share in a growing market, and were only exacerbated in the interim 2008 period when demand began to soften.

Nor does the record support Superpower's contentions that the domestic industry suffered from its reliance on ***, which allegedly suffered problems unrelated to imports during the period, and that Lowe's switched from the domestic like product to subject imports for purely non-price reasons.²⁰⁷ Agri-Fab's sales to *** over the POI, from \$*** in 2005 to \$*** in 2006 and \$*** in 2007, and then remained stable between the first halves of 2007 and 2008, at \$*** in the first half of 2007 and \$*** in the first half of 2008.²⁰⁸ We are unpersuaded that price played no role in Lowe's decision to source TBLGs from China, since the delivered purchase prices Lowe's paid for subject imports were *** to *** percent *** its delivered purchase prices for comparable domestic TBLGs.²⁰⁹

For purposes of the preliminary phase of these investigations, we find a reasonable indication that the domestic industry is materially injured and that subject imports had a significant adverse impact on the domestic industry.^{210 211}

²⁰¹ (...continued)

January-March 2008. Id. at Table VI-4. We note that our analysis of the domestic industry's return on investment and R&D expenditures includes data from ***, which are not significant enough to influence our analysis of the overall data.

²⁰² See CR/PR at Table Supplemental C-1. The domestic industry's labor productivity declined from *** units per thousand hours in 2005 to *** units per thousand hours in 2007, but was higher in January-March 2008, at *** units per thousand hours, than in January-March 2007, at *** units per thousand hours, ***. See id.

²⁰³ The domestic industry's ratio of COGS to sales increased from *** percent in 2005 to *** percent in 2007, and from *** percent in January-March 2007 to *** percent in January-March 2008. These changes were propelled largely by increased raw material costs. See CR/PR at Tables Supplemental VI-1, C-1. The ratio of raw material costs to sales increased from *** percent in 2005 to *** percent in 2007, and was *** percent in January-March 2008 compared to *** percent in January-March 2007. See id. at Table Supplemental VI-1.

²⁰⁴ See Superpower PCB at 3-7, 27.

²⁰⁵ CR/PR at Table IV-6.

²⁰⁶ See CR/PR at Tables IV-6, Supplemental C-1.

²⁰⁷ See Superpower PCB at 8-12.

²⁰⁸ Agri-Fab PCB at 28-29. Agri-Fab also notes that its sales volume to *** increased towards the end of the POI, from *** units in the first half of 2007 to *** units in the first half of 2008. Id.

²⁰⁹ CR at V-22-23 & n. 11; CR/PR at Tables D-1-5.

²¹⁰ We note that there is limited information on the record regarding non-subject foreign producers of TBLGs and
(continued...)

²¹⁰ (...continued)

the role of non-subject imports of TBLGs in the U.S. market. See CR at VII-7-8; PR at VII-4; CR/PR at Table VII-5. In any final phase of these investigations, we will collect additional information on these issues and invite parties to comment on whether Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006), is applicable to the facts of these investigations. We also invite parties to comment on what additional information the Commission should collect to address the issues raised by the Court, how that information should be collected, and which of the various non-subject sources should be the focus of additional information gathering by the Commission in any final phase of these investigations.

²¹¹ Vice Chairman Pearson and Commissioner Okun do not join the preceding footnote. Vice Chairman Pearson and Commissioner Okun note that in two Federal Circuit decisions, Bratsk Aluminum Smelter et al. v. United States, 444 F.3d 1369 (Fed. Cir. 2006) (“Bratsk”), and Caribbean Ispat, Ltd. v. United States, 450 F.3d 1346 (Fed. Cir. 2006) (“Caribbean Ispat”), the Court reaffirmed that the requisite causal link to subject imports is not demonstrated if such imports contributed only “minimally or tangentially to the material harm.” Bratsk, 444 F.3d at 1373 (Fed. Cir. 2006), quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997). Under Bratsk, the Commission is directed to undertake an “additional causation inquiry” whenever certain triggering factors are met: “whenever the antidumping investigation is centered on a commodity product, and price-competitive non-subject imports are a significant factor in the market.” Bratsk, 444 F.3d at 1375. The additional inquiry required by the Court, which the Commission refers to as the Bratsk replacement/benefit test, is “whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers.” Id.

As a threshold matter, it is not immediately clear how the Commission should interpret the Bratsk opinion in terms of its effect on our analysis of causation in Title VII investigations. Vice Chairman Pearson and Commissioner Okun discern at least two possible interpretations that differ substantially. The first interpretation is that Bratsk mandates application of an additional test apparently not contemplated by the statute (the so-called “replacement/benefit test”). Under this interpretation, Bratsk appears to require that the Commission apply an extra-statutory causation test with respect to non-subject imports and determine if the domestic industry will benefit from the anti-dumping duty or countervailing duty order. In response to the Federal Circuit’s instructions in Caribbean Ispat, the Commission majority applied this test in the Caribbean Ispat remand and reversed its original decision, thereby reaching a negative determination, based on Bratsk. The Court of International Trade affirmed the Caribbean Ispat remand results in Mittal Steel Point Lisas, Ltd. v. United States, 495 F. Supp. 2d 1374 (Ct. Int’l Trade 2007), which has been appealed to the Federal Circuit. While Vice Chairman Pearson and Commissioner Okun respectfully disagree with the Court that such a causation analysis is legally required, they perform the Bratsk replacement/benefit analysis below based on the record in these preliminary investigations.

The second interpretation is that Bratsk is a further development of the causation approach prescribed by Gerald Metals. Under this interpretation, the Commission is required to identify and assess the competitive effects of subject imports to ensure that they contribute more than “minimally or tangentially to the material harm” of the domestic industry. To the extent that the relevant information was available on the record in the preliminary phase of these investigations, the Commission evaluated this issue in its material injury analysis. See, e.g., CR at II-9-11; PR at II-5-7; CR/PR at Tables II-I, II-2, IV-3, IV-6, IV-7; CR at VII-7-8; PR at VII-4. The Commission will re-examine this issue in any final phase of these investigations once the Commission has collected further relevant information (e.g., information about the market from purchasers). For a complete statement of Vice Chairman Pearson and Commissioner Okun’s interpretation of Bratsk in a preliminary phase investigation, see Separate and Additional Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Concerning Bratsk Aluminum v. United States in Sodium Hexametaphosphate from China, Inv. No. 731-TA-1110 (Preliminary), USITC Pub. 3912 at 19-25 (Apr. 2007).

Having found that there is a reasonable basis to determine that an industry in the United States is materially injured by reason of subject imports from China, Vice Chairman Pearson and Commissioner Okun assess whether the facts of these investigations trigger a Bratsk analysis under the “replacement/benefit test” interpretation of Bratsk. Bratsk requires a two step analysis. First, they determine whether Bratsk is triggered based on the facts of these investigations. Second, if it is triggered, then they consider whether the non-subject imports would have replaced the subject imports and continue to cause injury to the domestic industry. Based on the record in these preliminary investigations, Vice Chairman Pearson and Commissioner Okun conclude that Bratsk is not triggered.

The Bratsk Court states that “{t}he obligation under Gerald Metals is triggered whenever the antidumping

(continued...)

CONCLUSION

For the foregoing reasons, and based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports of TBLGs from China that are allegedly sold in the United States at less than fair value and allegedly subsidized by the Government of China.

²¹¹ (...continued)

investigation is centered on a commodity product, and price-competitive non-subject imports are a significant factor in the market.” Bratsk, 444 F.3d at 1375. Thus, the Bratsk test purportedly is not required in every case, only in cases involving a “commodity product” and where “price competitive non-subject imports are a significant factor in the market.” Regardless of whether TBLG is a commodity product, information collected in the preliminary phase of these investigations indicates that non-subject imports are not price competitive in the U.S. market. Mexico is the only known source of non-subject TBLGs in the U.S. market, and the only known importer from Mexico is the ***. ***. CR at II-12, VII-7-8; PR at II-7, VII-4.. Although no pricing product data was collected for non-subject imports, the AUVs of non-subject import shipments were *** lower than the AUVs of subject import spreaders or domestic shipments of spreaders. See CR/PR at Table C-4. In 2007 and interim 2008, the only periods in which comparisons were possible, the AUVs of non-subject imports were \$*** to \$*** per unit, the AUVs of subject import spreaders were \$*** to \$*** per unit, and the AUVs of domestically-produced spreaders were \$*** to \$*** per unit. See id. Vice Chairman Pearson and Commissioner Okun suspect that the differences in the sizes of spreaders imported from Mexico as compared to the sizes of spreaders imported from China and produced domestically, may explain the *** differences in AUVs, and we intend to explore this issue more fully in the final phase of these investigations. Given the *** lower AUVs of non-subject import shipments, for purposes of the preliminary phase of these investigations, Vice Chairman Pearson and Commissioner Okun find that non-subject imports are not price competitive in the U.S. market. They therefore find that the second Bratsk triggering factor is not met. Accordingly, they need not apply the analysis dictated by Bratsk. They intend to seek more information on this issue in any final phase of these investigations, including pricing data for non-subject imports.

Even assuming arguendo that the Bratsk replacement/benefit test was triggered, Vice Chairman Pearson and Commissioner Okun note that the record in the preliminary phase of these investigations indicates that the lone Mexican producer of TBLGs could probably not have replaced subject imports in the U.S. market during the POI. There is no information on the record to suggest that this producer has the ability to produce anything other than ***. CR at VII-7-8; PR at VII-4; CR/PR at Table VII-5. This would severely limit its ability to replace subject imports, which ***. CR/PR at Table IV-8. Moreover, the Mexican producer lacked ***, much less to replace subject imports in the U.S. market. CR/PR at Table VII-5.

In any final phase of these investigations, any party holding contrary views should so indicate and provide the basis for its views when providing written comments on the draft questionnaires. If warranted, Vice Chairman Pearson and Commissioner Okun will reconsider the applicability of Bratsk in any final phase of these investigations.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed on behalf of a Agri-Fab, Inc. (“Agri-Fab” or “petitioner”) of certain tow-behind lawn groomers (“TBLG”), and parts thereof,¹ 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. The following tabulation provides information relating to the background of these investigations:²

Effective date	Action
June 24, 2008	Petition filed with Commerce and the Commission; institution of Commission investigations (73 FR 37494, July 1, 2008).
July 15, 2008	Commission’s conference. ¹
July 21, 2008	Commerce’s notices of initiation (73 FR 42315 (antidumping) and 73 FR 42324 (countervailing duty)).
August 7, 2008	Commission’s vote.
August 8, 2008	Commission’s determinations transmitted to Commerce.
August 15, 2008	Commission’s views transmitted to Commerce.
¹ A list of witnesses appearing at the conference is presented in app. B 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

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.

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 decline 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 Report

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

MARKET SUMMARY

TBLGs are used to maintain a healthy lawn. Trade in the U.S. market for TBLGs totaled more than \$*** million or *** thousand units during 2007, of which *** percent was accounted for by sales of U.S.-produced TBLGs by value and *** percent by quantity. Imports from subject sources 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. Four producers supplied the Commission with data on their U.S. TBLG operations. Six firms responded that they imported TBLGs during the January 2005 to March 2008 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 TBLG 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.

PREVIOUS INVESTIGATIONS

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

NATURE AND EXTENT OF ALLEGED SUBSIDIES AND SALES AT LTFV

Alleged Subsidies

On July 21, 2008, Commerce initiated its countervailing duty investigation concerning TBLGs from China.³ Commerce indicated it would be investigating three preferential income tax programs at the national level, five value added tax and indirect tax programs at the national level, the provision of hot-rolled steel at less than adequate remuneration, 11 income tax programs at the provincial or local levels, one program of preferential policies and benefits to firms located in Shandong Province, five programs of preferential policies and benefits to firms located in Qingdao Municipality, and two programs of preferential policies and benefits for firms located in the Lingang Processing Industrial Zone in Qingdao Municipality.

Alleged Sales at LTFV

On July 21, 2008, Commerce initiated its antidumping investigation concerning TBLGs from China.⁴ The estimated dumping margin for Chinese firms selling TBLGs in the U.S. market is 154.72 percent.

THE SUBJECT MERCHANDISE

Commerce's Scope

{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, 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

³ *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 73 FR 42324, July 21, 2008.

⁴ *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.

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, “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 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 these investigations.

Tariff Treatment

Table I-1 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 statistical reporting number 8432.40.0000, while the other three types of TBLGs are imported under statistical reporting number 8479.89.9897. Commerce identified other subheadings of the HTS under which TBLGs and their “major components” may be classified, including 8432.80.00, 8432.90.00, 8432.90.0030 or 8432.90.0080, 8479.90.94, 8479.90.9496 and 9603.50.00.

Table I-1
TBLGs: Statistical reporting numbers of the HTS, 2008

Statistical reporting number	Article description ¹	General ²	Special	Column 2 ⁴
		Rates (percent ad valorem)		
8432.40.0000	Agricultural, horticultural, or forestry machinery for soil preparation or cultivation: Manure spreaders and fertilizer distributors	Free		Free
8432.80.0000	Agricultural, horticultural, or forestry machinery for soil preparation or cultivation: Other machinery (than of plows; harrows, scarifiers, cultivators, weeder and hoes; seeders, planters and transplanters; manure spreaders and fertilizer distributors)	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, weeder and hoes; seeders, planters, transplanters, manure spreaders and fertilizer distributors)	Free		Free

Table continued next page.

Table I-1--Continued

TBLGs: Statistical reporting numbers of the HTS, 2008

Statistical reporting number	Article description ¹	General ²	Special	Column 2 ⁴
		Rates (percent ad valorem)		
8479.89.9897	<p>Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:</p> <p>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):</p> <p>Other (than of for treating metal, including electric wire coil-winders; mixing, kneading, crushing, grinding, screening, sifting, homogenizing, emulsifying or stirring machines):</p> <p>Other (than of electromechanical appliances with self-contained electric motor; carpet sweepers; and machines for manufacturing optical media):</p> <p>Other (than machinery for oil and gas field wireline and downhole equipment; automotive maintenance machines; hydraulic accumulators; ultrasonic cleaning devices; and industrial vibrators)</p>	2.5	Free ³	35.0
8479.90.9496	<p>Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof:</p> <p>Parts:</p> <p>Other (than of articles of subheading 8479.89.10, air humidifiers or dehumidifiers, or 8479.89.70, carpet sweepers):</p> <p>Other (than of industrial robots):</p> <p>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)</p>	Free		35.0

Table continued next page.

Table I-1--Continued

TBLGs: Statistical reporting numbers of the HTS, 2008

Statistical reporting number	Article description ¹	General ²	Special	Column 2 ⁴
		Rates (percent ad valorem)		
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
<p>¹ An abridged description is provided for convenience. However, an unabridged description is available from the respective headings, subheadings, and legal notes of the 2008 U.S. Harmonized Tariff Schedule.</p> <p>² Normal trade relations rate applicable to imports from China.</p> <p>³ For eligible goods under preferential trade relations: Generalized System of Preferences, Australia Free Trade Agreement, Automotive Products Trade Act, Bahrain Free Trade Agreement, Agreement on Trade in Civil Aircraft, North American Free Trade Agreement with Canada and Mexico, Chile Free Trade Agreement, Caribbean Basin Economic Recovery Act, Israel Free Trade Area, Andean Trade Preference Act, Jordan Free Trade Area, Dominican Republic-Central America Free Trade Agreement, Morocco Free Trade Agreement, and Singapore Free Trade Agreement.</p> <p>⁴ Applies to imports from a small number of countries that do not enjoy normal or preferential trade relations duty status.</p> <p>Source: Harmonized Tariff Schedule of the United States (2008).</p>				

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 and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price. The petitioner argues that the Commission should find a single like product co-extensive with Commerce's scope. The respondent counsel for Superpower argues 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 argues 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 argues, would otherwise meet the Commission's factors based on the petitioner's own domestic like product arguments.⁵

Physical Characteristics and Uses

In these investigations non-motorized tow-behind lawn groomers (TBLGs) is a group of four separate pieces of lawn grooming equipment, whereby each piece 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 applications, all of which share the physical characteristics imparted by their common requirement of a towing apparatus and by their complementary functions for the common purpose of maintaining an established 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 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.⁶ The specific types of TBLGs covered in these investigations are tow-behind lawn aerators, dethatchers, spreaders, and sweepers.

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 to aerate a lawn once or twice a year, in the spring and/or fall.⁷ 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 that 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 aerator produced by Agri-Fab.

⁵ Respondent's postconference brief, pp. 15, 25.

⁶ There does not appear to be a defined lawn size for TBLGs. The petitioner suggests that an upper range of five acres would be a practical lawn size for tow-behind sweepers and probably more than that for tow-behind aerators. However, no physical lawn size limitations were provided for any of the four pieces of lawn grooming equipment in this product group, and no upper end size benchmarks were provided for dethatchers and spreaders. *See* conference transcript, pp. 36-37.

⁷ *Clemson University. Home and Garden Information Center. Aerating Lawns*, HGIC 1200. <http://hgic.clemson.edu/factsheets/hgic1200.htm> (accessed July 11, 2008).

Figure I-1
TBLGs: Subject tow-behind aerator



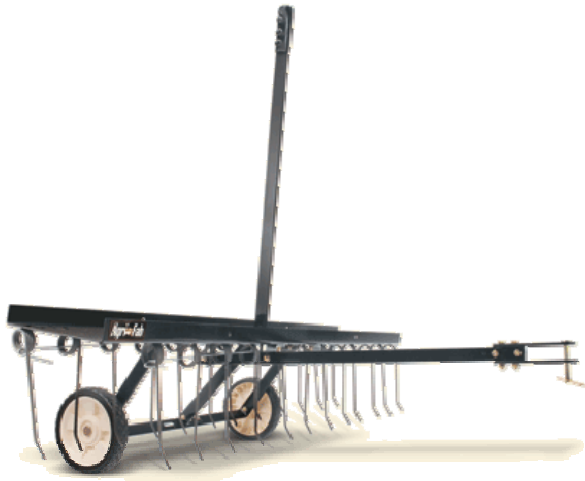
Source: <http://www.agri-fab.com/>.

Dethatchers

Tow-behind dethatchers are designed to scrape the lawn similar to 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 nutrient to the grass roots. Depending on thatch buildup, it is generally recommended to dethatch once a year to maintain a healthy lawn.⁸ Dethatchers have a series of spring steel tines assembled along an alignment wire that is attached to a tray with sides, 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.

⁸ *Bachman's Floral Home of Garden. Dethatching and Aerating Lawns.*
<http://www.bachmans.com/tipsheets/lawn/Dethatching.cfm> (accessed July 13, 2008).

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. Spreaders are generally used as necessary for feeding, seeding, and maintaining the lawn. 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, and 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.

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 the lawn and collect it in a catcher bag for disposal. Lawns are generally swept frequently for a pleasing appearance. However, it is recommended to let some clippings accumulate as a thin protective layer for

the grass roots during periods of hot sun and drought.⁹ 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”) formed to protect the brushes and control the flow of swept up debris to the catcher. As the sweeper is pulled over the lawn, the brushes rotate, sweeping up the lawn debris and throwing it back into a bag catcher, 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,¹⁰ 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 separate pieces of equipment listed above share the common purpose of lawn maintenance and are frequently used together. In some cases the major work components may be contained in one piece of equipment designed to perform certain functions simultaneously. For example, a TBLG implement may consist of an aerator and spreader or a sweeper and dethatcher. Figure I-6 presents an image of a combo tow-behind aerator and spreader produced by Agri-Fab,¹¹ while figure I-7 presents an image of a combo tow-behind sweeper and dethatcher.¹²

⁹ Wisegeek. *What is a Lawn Sweeper?* <http://www.wisegeek.com/what-is-a-lawn-sweeper.htm> (accessed July 13, 2008).

¹⁰ 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).

¹¹ 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.

¹² 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.

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/>.

Another configuration of TBLG may involve modular units that consist of a common chassis, with or without wheels, and a common hitch, to which an aerator, dethatcher, spreader, and sweeper can each be interchangeably attached to perform a designated function.¹³

Table I-2 presents U.S. producers' and U.S. importers' ranking of the first domestic like product factor, *i.e.*, physical characteristics and uses, by type of TBLG.

¹³ ***. Staff tour of the petitioner's plant facility on July 1, 2008.

Table I-2

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	1	1
	Spreaders				1	3
	Sweepers	1			1	2
Dethatchers	Spreaders				1	3
	Sweepers	1			1	2
Spreaders	Sweepers	1			1	2
U.S. importers						
Aerators	Dethatchers			1	2	3
	Spreaders	2			1	3
	Sweepers				1	5
Dethatchers	Spreaders	2			1	3
	Sweepers				3	3
Spreaders	Sweepers	2			1	3
Source: Compiled from data submitted in response to Commission questionnaires.						

Responding firms typically indicated that all types of TBLGs were somewhat or not at all similar in terms of their physical characteristics and end uses. The petitioner argues that aerators, dethatchers, spreaders, and sweepers all share certain common 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.¹⁴ The respondent counsel for Superpower argues that dethatchers/sweepers should be considered separately from aerators and separately from spreaders based, in part, on those products’ differing physical characteristics and uses. Specifically, it argues that spreaders unlike the other products have hoppers and do not contact the ground, aerators unlike other products penetrate the ground, and sweepers/dethatchers unlike the other products scrape the ground.¹⁵

Manufacturing Facilities and Production Employees

TBLGs as defined in the scope of these investigations are manufactured by the petitioner in a facility that also produces non-TBLGs using the same manufacturing equipment and workers used to produce TBLGs.¹⁶ Such non-TBLG equipment manufactured by the petitioner includes ground-engaging implements (e.g., cultivators, graders, and tillers), snow throwers, and various other steel machined pieces special ordered by customers on an as-needed basis.¹⁷

Although TBLGs can reportedly be made of any material, the primary material used for the manufacturing of TBLGs has historically been steel.¹⁸ Non-alloy, hot rolled steel, ***, is used to make

¹⁴ Conference transcript, pp. 11-12 (Smirnow).

¹⁵ Respondent’s postconference brief, pp. 15-20.

¹⁶ This discussion is derived from the petition, pp. 10-11; staff tour of the petitioner’s plant facility on July 1, 2008; and Lori Pfeiffer, *A Miracle in the Making: The History of Agri-Fab, Inc.* Phoenix, AZ: Heritage Publishers, Inc., 2001.

¹⁷ Petition, Exhibit I-7 and staff tour of the petitioner’s plant facility on July 1, 2008.

¹⁸ Conference transcript, pp. 77-78 (Cohan).

steel tubing for frames, supporting trays, and the brush housing for sweepers. 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.

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 finish out each of the TBLGs.¹⁹

The petitioner has increasingly automated the processes involved in fabricating the major steel components of TBLGs for a more efficient production. The petitioner ***. 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 ***, precision tooling ***. All of the TBLGs covered in these investigations are made on the same equipment, with the same employees, and with some employees ***. The paint is automated with powder-coating (a form of powder paint) spray booths, which make for a cleaner working environment, reduced hazardous waste, and improve handling of painted parts within the plant for a higher quality of painted parts. The painting of all painted components is handled on the same paint line. Finally, the installation of computer-controlled assembly lines monitors each product unit by weight as a check for missing parts, ***.²⁰

Table I-3 presents U.S. producers' and U.S. importers' ranking of the second domestic like product factor, *i.e.*, common manufacturing facilities, by type of TBLG. In terms of this second factor, responding firms indicated that all types of TBLGs share mostly to somewhat common manufacturing processes. The petitioner argues that the second factor is met since the production and related workers and machinery used in production are the same for each type of TBLG.²¹ The respondent counsel for Superpower indicated that while all four types of TBLGs share a common manufacturing facility at the petitioner's production location, certain information on the record indicates that other U.S. producers, specifically ***, only manufacture one type of TBLG at its production facility and that therefore "the degree of commonality is not as high as suggested in the petition."²²

¹⁹ Petition, p. 10.

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

²¹ Conference transcript, pp. 12-13 (Smirnow).

²² Respondent's postconference brief, pp. 22-23.

Table I-3

TBLGs: Firms' reporting on the degree of similarity between types of TBLGs in terms of common manufacturing facilities

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	1	
	Spreaders			1	2	1
	Sweepers	1		1	2	
Dethatchers	Spreaders			1	1	2
	Sweepers	1		1	2	
Spreaders	Sweepers	1		1	2	
U.S. importers						
Aerators	Dethatchers	2		2	2	
	Spreaders	2		1	3	
	Sweepers	2		2	2	
Dethatchers	Spreaders	2		1	3	
	Sweepers	2		2	2	
Spreaders	Sweepers	2		1	3	
Source: Compiled from data submitted in response to Commission questionnaires.						

Interchangeability

Table I-4 presents U.S. producers' and U.S. importers' ranking of the third domestic like product factor, *i.e.*, interchangeability, by type of TBLG. In terms of the third factor, responding firms indicated that the four types of TBLGs are typically not at all interchangeable. While the petitioner admits that the product types are not interchangeable, it argues nonetheless that by virtue of their complementary lawn grooming functions the four types of TBLGs should be considered as a single domestic like product.²³ The respondent counsel for Superpower argues that none of the products are interchangeable based on their particular lawn grooming function, *e.g.*, you cannot aerate a lawn with a spreader.²⁴

²³ Conference transcript., pp. 13-14 (Smirnow).

²⁴ Respondent's postconference brief, pp. 23-24.

Table I-4

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				3
	Spreaders					4
	Sweepers	1				3
Dethatchers	Spreaders					4
	Sweepers	1			1	2
Spreaders	Sweepers	1				3
U.S. importers						
Aerators	Dethatchers					6
	Spreaders					6
	Sweepers					6
Dethatchers	Spreaders					6
	Sweepers				1	5
Spreaders	Sweepers					6
Source: Compiled from data submitted in response to Commission questionnaires.						

Customer and Producer Perceptions

Table I-5 presents U.S. producers' and U.S. importers' ranking of the fourth domestic like product factor, *i.e.*, customer and producer perceptions, by type of TBLG. In terms of the fourth factor, producers generally indicated that customer and producer perceptions were fully or mostly similar between the four types of TBLGs, while importers indicated that customer and producer perceptions were not at all similar among the four types of TBLGs. The petitioner argues that the four types of TBLGs belong to a family of tow-behind lawn care products and that customers often, although not always, purchase a group or range of TBLG products.²⁵ Superpower argues that customer and producer perceptions are not similar among the four types of TBLGs and cites to how the petitioner in its own sales literature groups the types of TBLGs separately by their functions, *e.g.*, sweepers and spreaders separately from each other.²⁶

²⁵ Conference transcript., pp. 15-16 (Smirnow).

²⁶ Respondent's postconference brief, p. 24.

Table I-5

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		1
	Spreaders		1	1		2
	Sweepers	1	1	1		1
Dethatchers	Spreaders		1	1		2
	Sweepers	1	1	1		1
Spreaders	Sweepers	1	1	1		1
U.S. importers						
Aerators	Dethatchers	1		1		4
	Spreaders	1		1		4
	Sweepers	1		1		4
Dethatchers	Spreaders	1		1		4
	Sweepers	1		1		4
Spreaders	Sweepers	1		1		4

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

The majority of U.S. producers reported that U.S.-produced TBLGs are always interchangeable with subject imports from China. A slight majority of the importers that compared TBLGs produced in China with those produced in the United States reported that they are always or frequently interchangeable, while the remainder reported that they are sometimes interchangeable, citing quality differences that can affect interchangeability in “heavy duty” applications or use in rugged terrains. More information in relation to interchangeability between domestic and imported TBLGs is presented in *Part II* of this report.

Channels of Distribution

Table I-6 presents U.S. producers’ and U.S. importers’ ranking of the fifth domestic like product factor, *i.e.*, channels of distribution, by type of TBLG. In terms of the fifth factor, responding firms indicated that channels of distribution were fully or mostly similar among the four types of TBLGs. The petitioner argues that all of the types of TBLGs are sold through the same channels and get to market via the same means. Further, it argues that even at the retail level the four types of TBLGs are typically sold along side each other.²⁷ Superpower agrees that all TBLGs are sold via the same channels of distribution.²⁸

²⁷ Ibid., pp. 16-17 (Smirnow).

²⁸ Respondent’s postconference brief, p. 25.

Table I-6
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	1		
	Spreaders		2	1		1
	Sweepers	1	2	1		
Dethatchers	Spreaders		2	1		1
	Sweepers	1	2	1		
Spreaders	Sweepers	1	2	1		
U.S. importers						
Aerators	Dethatchers	1	1	4		
	Spreaders	1	1	4		
	Sweepers	1	1	4		
Dethatchers	Spreaders	1	1	4		
	Sweepers	1	1	4		
Spreaders	Sweepers	1	1	4		
Source: Compiled from data submitted in response to Commission questionnaires.						

Table I-7 presents information on the channels of distribution for overall TBLGs for U.S. producers and for U.S. importers. In summary, both U.S. producers and U.S. importers reported that the vast majority, over *** percent, of all TBLGs are sold through “distributors,”²⁹ and thus by corollary each of the four product types must share the same channels of distribution.

Table I-7
TBLGs: Channels of distribution for U.S. producers' and U.S. importers U.S. shipments, 2005-07, January-March 2007, and January-March 2008

* * * * *

Price

Table I-8 presents U.S. producers' and U.S. importers' ranking of the sixth domestic like product factor, *i.e.*, price, by type of TBLG. In terms of the sixth factor, responding firms indicated that prices were somewhat similar among the four types of TBLGs. The petitioner acknowledged that prices for certain types of TBLGs, specifically dethatchers (generally lowest priced) and sweepers (generally highest price), do not overlap, but argued that other types of TBLGs' prices overlap to a certain extent.³⁰ Superpower does not specifically address the sixth factor in its domestic like product analysis.

²⁹ Data gathered in the preliminary phase of these investigations broke out channels of distribution based on the Commission's typical break-out between distributors and end users. Confusion arose among reporting firms, however, in how to categorize U.S. shipments to retail stores. All but one of the responding firms indicated that their U.S. shipments to retailers were U.S. shipments to distributors for purposes of reporting data in the Commission's questionnaire.

³⁰ *Ibid.*, pp. 16-17 (Smirnow).

Table I-8

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

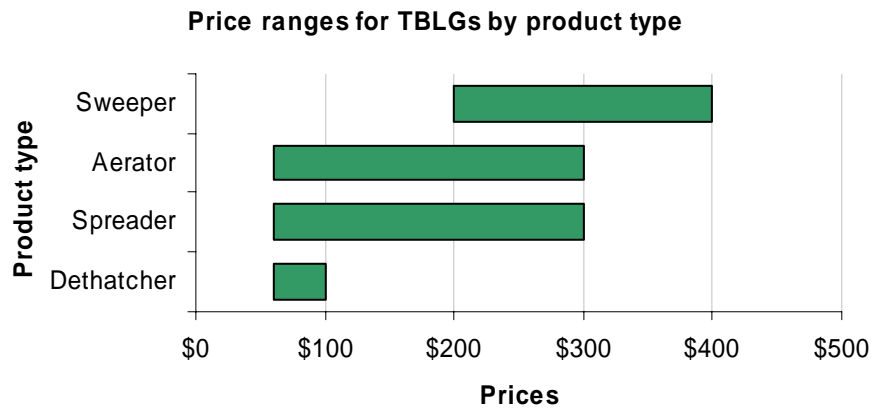
Reporting firms / product comparison		Number of firms reporting--				
		No familiarity	Fully similar	Mostly similar	Somewhat similar	Not at all similar
U.S. producers						
Aerators	Dethatchers	1		2	1	
	Spreaders			3		1
	Sweepers	1		1	1	1
Dethatchers	Spreaders			2		2
	Sweepers	1		1		2
Spreaders	Sweepers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

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

Figure I-8 presents typical price ranges for each type of TBLG at the retail level.

Figure I-8

TBLGs: Price ranges at the retail level by product type



Source: Petition, pp. 16-17.

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

U.S. MARKET SEGMENTS/CHANNELS OF DISTRIBUTION

TBLGs consist of four categories: sweepers, aerators, dethatchers, and spreaders. Petitioner reports that sales of sweepers account for a plurality of the U.S. sales volume of TBLGs.¹ TBLGs are used mostly by individual homeowners to manage and groom their lawns. TBLGs are used in conjunction with lawn tractors, sit-down lawn mowers, or other vehicles.

Based on questionnaire responses, there is a considerable amount of overlap in the customers of U.S. producers and importers of TBLGs, including ***.

U.S. producers reported that the vast majority of their TBLGs are sold from inventory, with lead times ranging from one day to as much two weeks. *** producers reported that *** percent or less of their TBLGs are produced to order, with lead times ranging from ***. *** of the *** responding importers of TBLGs imported from China reported that *** of their TBLGs are produced to order, with lead times ***. *** reported that *** of TBLGs are from inventory, with lead times of ***.

When firms were asked to list the market areas in the United States where they sell TBLGs, the responses showed that the market areas tended to be nationwide for both U.S. producers and U.S. importers, with most shipments going to the Midwest, the Southeast, and the Northeast.

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 2007 occurred within distances of *** miles from their facilities, *** percent occurred within distances of ***, and *** percent occurred within distances *** miles from their facilities. For importers from China, *** percent of sales occurred within *** miles of their storage facilities, *** percent of sales occurred within *** miles, and *** percent occurred within distances *** miles. ***.²

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

The supply response 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. The evidence indicates that the U.S. supply is likely to be relatively elastic, due primarily to ***.

Industry capacity

U.S. producers' annual capacity utilization rates for TBLGs decreased over the period of investigation, from *** percent in 2005 to *** percent in 2007 and to *** percent in the first quarter of 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.

¹ Petitioner's post-conference brief, exh. 1, p. 6.

² ***.

Alternative markets

U.S. producers' exports, as a share of its total shipments, increased from *** percent in 2005 to *** percent in 2007 and to *** percent in the first quarter of 2008. These data indicate that the U.S. producers have some ability to divert shipments to or from alternative markets in response to changes in the price of TBLGs. U.S. producers reported that their sales to Europe have recently increased, due partly to the weakening of the U.S. dollar against foreign currencies.³

Inventory levels

U.S. producers' ratio of end-of-period inventories to total shipments decreased from *** percent in 2005 to *** percent in 2007 and to *** in the first quarter of 2008. These data indicate that the U.S. producers have *** ability to use inventories as a means of increasing shipments of TBLGs to the U.S. market.

Production alternatives

Petitioner reported that it uses the manufacturing equipment and the same workers used to make TBLGs in the production of other products.

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 2005 to *** percent in 2007; it is projected to be *** percent in 2008 and *** percent in 2009.⁴

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 2005 to *** percent in 2007; it is projected to be *** percent in 2008 and *** percent in 2009. The share of China's shipments to export markets other than the United States increased from *** in 2005 to *** percent in 2007; it is projected to be *** percent in 2008. The share of China's shipments going to the home market increased from *** percent in 2005 to *** percent in 2007; it is projected to be *** percent in 2008 and *** percent in 2009.

³ Conference transcript, p. 92 (Harvey).

⁴ Petitioner argues that capacity in China is capable of growing due to the fact that most Chinese TBLG manufacturers produce other products a well and would be able to transfer production to TBLGs with little or no difficulty. Petitioner's post-conference brief, p. 24.

Inventory levels

Responding Chinese producers' inventories, as a share of total shipments, *** from *** percent in 2005 to *** percent in 2007; they are projected to be *** percent in 2008 and *** percent in 2009. These data indicate that producers in China may be limited in their ability to use inventories as a means of increasing shipments of TBLGs to the U.S. market.

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 2005 to *** percent in 2007 and to *** percent in the first quarter of 2008. These imports as a share of the value of total U.S. imports of TBLGs increased from *** percent in 2005 to *** percent in 2007 and to *** percent in the first quarter of 2008. ***.⁵

U.S. Demand

Demand Characteristics

The existence of substitutes for TBLGs discussed below indicates that the demand for this product is likely to be relatively price elastic. The demand for TBLGs is mostly determined by the overall economy, consumers' discretionary income, and weather conditions, but is also partly determined by the housing market, as the number of homeowners may impact consumption of TBLGs; however, it is unclear if existing homeowners would change their demand for TBLGs based on home sales.⁶ Seasonality exists in the consumer segment of the market, with a large percentage of the product going into stores from January through May, leveling off during summer, and somewhat of an increase for sweepers in the fall.⁷ 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.⁸

When asked how the overall demand for TBLGs has changed since January 2005, *** of *** of the responding U.S. producers reported that demand had decreased, mostly citing the weakness in the housing market and decreased sales of lawn equipment. *** reported that demand had increased, citing rural development. All responding importers reported that demand for TBLGs has decreased since January 2005, due to the downturn in the housing market, general economic conditions, and decreased sales of lawn equipment.⁹ One importer, Swisher, reported that the lawn tractor market, which is closely associated with TBLGs, has experienced four years of downturns.¹⁰

According to petitioner, the U.S. TBLGs industry has weathered downturns in the housing market before and that it is indeed possible that existing homeowners trying to sell their house in a depressed housing market may focus on lawn grooming with TBLGs in order to increase "curb appeal" and thus

⁵ Petitioner's postconference brief, p. 15.

⁶ For more information on demand, see parties' arguments summarized on the following page.

⁷ Conference transcript, pp. 60-61 (Cohan).

⁸ Conference transcript, p. 61 (Cohan).

⁹ Petitioner argues that importer Swisher has publicly indicated that the lawn and garden attachment industry is experiencing "steady growth." Petitioner's postconference brief, exh. 3, citing a Swisher press release: http://www.swisherinc.com/urban_market.asp. However, it is unclear what time period the press release covers and if the products cited ("food plot implements and similar hunting utility accessories") are under the scope of these investigations.

¹⁰ Conference transcript, p. 91 (Swisher).

their chances of selling their house.¹¹ Petitioner report that it designs its products to have a life span of *** under normal conditions.¹²

Respondent argues 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; water use restrictions and adverse weather conditions, including drought-like conditions in the Southeast, fires on the west coast, and floods in the Midwest; 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 argues that respondent's statements listed above are speculative and that each claim can arguably be interpreted as having the opposite effect on demand.¹⁴ Petitioner also asserts that even if factors unrelated to the low-priced subject imports are responsible for the decrease in demand for petitioner's products, then sales trends for both U.S. producers and importers of subject merchandise should be at least similar, but they are not.¹⁵ Moreover, it reports that zero-turn and mulching technologies have been in existence for far too long to indicate that they have rendered TBLGs obsolete.¹⁶

Respondent also alleges 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 Petitioner contradicts this argument, stating that ***.¹⁸

According to the Census Bureau, new home sales in the United States decreased by 39.5 percent on an annual basis from 2005 to 2007.¹⁹ According to the National Association of Realtors, the index of pending sales of existing homes decreased by 22.6 percent from 2005 to 2007; the index in March 2008 was 13.8 percent below the 2007 level.²⁰

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 desirability of using a push lawn groomer.²¹ Other substitutes cited by importers included riding mowers/baggers, walk-behind spreaders, and rakes. Importers also report that

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

¹² Petitioner's postconference brief, exh. 1, p. 3.

¹³ Conference transcript, pp. 91-93,

¹⁴ In particular, petitioner asserts 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 asserts 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 Petitioner's postconference brief, pp. 28-29.

¹⁹ U.S. Census Bureau, http://www.census.gov/const/sold_cust.xls.

²⁰ National Association of Realtors. <http://www.realtor.org/research/research/ehsdata>.

²¹ Conference transcript, p. 15 (Smirnow).

mulching units attached to mowers can serve as a substitute for all four categories of TBLGs.²² Importers 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.²³ Such zero-turn mowers are able to use bumper-mounted attachments for lawn grooming activities.²⁴

Petitioner disagrees with respondent’s characterization that new technologies such as mulching units and zero-turn mowers obviate the need for TBLGs, arguing that importer *** entered the U.S. TBLGs market after both zero-turn and mulching technology had already penetrated the U.S. market.²⁵

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. The discussion is based upon the results of questionnaire responses from producers and importers.

Comparisons of Domestic Product 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 and importers 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-1. A slight majority of the importers that compared TBLGs from China with those from the United States reported that they are always or frequently interchangeable, while the remainder reported that they are sometimes interchangeable, as shown in table II-1.

Table II-1
TBLGs: Perceived degree of interchangeability of product produced in the United States and in other countries

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

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

¹ These comparisons involved TBLGs produced in Mexico (reported as “always” interchangeable) and TBLGs produced in Eastern Europe (reported as “frequently” interchangeable).

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

One importer reported that quality and design differences can limit interchangeability between “heavy duty” applications and standard consumer applications, while another importer, ***, reported that, ***.

As indicated in table II-2, half of the responding U.S. producers reported that differences other than price are sometimes significant. A slight majority of the importers that compared U.S.-produced

²² Respondent’s postconference brief, p. 6.

²³ Respondent’s postconference brief, p. 7.

²⁴ Conference transcript, p. 119 (Swisher).

²⁵ Petitioner’s postconference brief, exh. 4.

TBLGs with those from China said that the differences are frequently significant. U.S. producers reported that the quality of TBLGs produced in China was originally problematic, with one specifically citing the paint quality, but that the quality has improved significantly since 2005. Petitioner also reports 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 in sales.²⁶ Petitioner also reports that producers in China have directly copied its products, thus minimizing the non-price differences between its TBLGs and subject imports.²⁷ Another U.S. producer *** reported that the lack of innovation or change in existing TBLG products, can cause the product to become more like a commodity, thereby forcing down the price a consumer is willing to pay.

Two importers that reported that differences other than price are frequently significant cited lead times and availability in particular. Three importers reported that there can be quality differences, ***. 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 the package that its competitors offered at the time.²⁸ Petitioner asserts 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.²⁹ Petitioner also argues that the alleged “lack of innovation” on the part of U.S. manufacturers is not credible, ***.³⁰

Table II-2
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	1	0	3	2	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 reports that the 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 them.³¹ Petitioner also reports that an imported 48-inch sweeper may compete against its 46-inch sweeper.³²

²⁶ Conference transcript, p. 27 (Cohan).

²⁷ Petition, volume I, pp. 29-30 and exh. I-24.

²⁸ Conference transcript, p. 89 (Swisher).

²⁹ Petitioner’s postconference brief, p. 16, fn. 29.

³⁰ Petitioner’s postconference brief, pp. 16-17 and ***.

³¹ Petitioner’s postconference brief, exh. 1, p. 1.

³² Petitioner’s postconference brief, exh. 1, p. 4.

Petitioner reports that *** percent of the value of its shipments of TBLGs in 2007 were of combination spiker/spreader units and that *** percent were of combination sweeper/dethatcher units.³³

When asked if there had been any significant changes in product range or marketing of TBLGs since 2005, one producer and one importer reported the importance of private labeling.

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-1 and II-2. One producer reported that TBLGs produced in Mexico are always interchangeable with domestically produced TBLGs, whereas product from Eastern Europe was frequently interchangeable with domestically produced TBLGs.³⁴ *** from Mexico.

³³ Petitioner's postconference brief, exh. 1, p. 2.

³⁴ There were no imports of TBLGs fro Eastern Europe into the United States during the period of investigation.

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 alleged margin of dumping and alleged subsidies was presented in *Part I* of this report and information on the volume and pricing of imports of the subject merchandise is presented in *Part IV* and *Part 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 four firms that accounted for the vast majority of U.S. production of TBLGs over 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 of TBLGs, their positions on the petition, production locations, production, and shares of reported production, January 2005 to March 2008

Firm	Position on petition	Production location(s)	Total production (units)	Share of production (percent)
Agri-Fab	Supports, petitioner	Sullivan, IL	***	***
Brinly Hardy	***	Jeffersonville, IN	***	***
Ohio Steel Industries	*** ¹	Columbus, OH	***	***
Spyker Spreaders	***	Urbana, IL	***	***
Total			***	***
¹ ***: *** U.S. Producers' questionnaire response, section I-3. Source: Compiled from data submitted in response to Commission questionnaires.				

Agri-Fab and Brinly Hardy account for *** of the reported U.S. production of TBLGs over the period examined. These two firms account for *** percent of reported U.S. production of TBLGs based on data gathered in the preliminary phase of these investigations and an estimated *** percent of U.S. production based on estimates provided in the petition on the size of the U.S. industry.³¹ After Agri-Fab and Brinly Hardy, U.S. producer *** was identified as potentially the *** U.S. producer of TBLGs in the petition. *** did not provide the Commission with a U.S. producers' questionnaire response, and was estimated to account for *** percent of U.S. production.³²

Table III-2 presents information on U.S. producers' ownership, TBLGs' share of production of all products produced on the same equipment in 2007, and lists of other products produced on the same equipment.

³¹ Table III-1 and petition, exh. 2.

³² Petition, exh. 2.

Table III-2

TBLGs: U.S. producers' ownership, TBLGs' share of production of all products produced on the same equipment, and lists of other products produced on the same equipment, 2007

Firm	Ownership	TBLGs' share of total production (percent)	Other products produced on same equipment and their shares
Agri-Fab	AF Holding Company	***	Tow-behind carts (***) 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).
Spyker Spreaders	***	***	Various other metal fabrication parts for firms, including poultry equipment.

Note: --Because of rounding, figures may not add to 100.
Source: Compiled from data submitted in response to Commission questionnaires.

U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

Table III-3 and figure III-1 present U.S. producers' production, capacity, and capacity utilization.

Table III-3

TBLGs: U.S. producers' production, capacity, and capacity utilization, 2005-07, January-March 2007, and January-March 2008

* * * * *

Figure III-1

TBLGs: U.S. producers' production, capacity, and capacity utilization, 2005-07, January-March 2007, and January-March 2008

* * * * *

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 aerators and sweepers, which are the products with the smallest and largest volume of production out of all TBLGs, respectively, experienced the sharpest decline in capacity utilization of the four types of TBLGs between 2005 and 2007. Capacity utilization for sweepers was lower in the January to March periods examined compared to the other three product types due to the seasonality of the products' sales. Tow-behind aerators, dethatchers, and spreaders are sold more in the spring of the year at the retail level, while tow-behind sweepers are sold more in the fall of the year at the

retail level. This seasonality also explains why production of tow-behind sweepers is higher in the calendar year periods as a share of total TBLG production than in the January to March periods.

Table III-4

TBLGs: U.S. producers' production, capacity, and capacity utilization by product type, 2005-07, January-March 2007, and January-March 2008

* * * * *

Table III-5

TBLGs: Shares of U.S. production by product type, 2005-07, January-March 2007, and January-March 2008

* * * * *

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 between 2005 and 2007. While U.S. producers' U.S. shipments decreased in each calendar year comparison, U.S. producers experienced a much larger decrease in their U.S. shipments between 2006 and 2007 of *** percent by quantity than they experienced between 2005 and 2006, which was relatively stable, declining by *** percent.³³

Table III-6

TBLGs: U.S. producers' U.S. shipments, exports shipments, and total shipments, 2005-07, January-March 2007, and January-March 2008

* * * * *

Export shipments accounted for between *** and *** percent of U.S. producers' total shipments of TBLGs. With the decline in the U.S. dollar against most trading partners' currencies, U.S. producers were able to increase their export shipments in 2007 and into 2008,³⁴ but not enough to offset the decline in lost sales in the U.S. market.³⁵

³³ Agri-Fab accounted for *** of this decline with its U.S. shipments declining by *** units out of total decline of *** units as reported by responding U.S. producers. Further, Agri-Fab's decline in U.S. shipments between 2006 and 2007 related primarily to ***. Of Agri-Fab's decrease of *** units in U.S. shipments between 2006 and 2007, *** units related to Agri-Fab's decreased shipments to *** and *** units related to Agri-Fab's decreased shipments to customers other than ***. Agri-Fab's U.S. producers' questionnaire response, section II-8, and e-mail from Kaz Kasumune, counsel to Agri-Fab, July 21, 2008. The decrease in Agri-Fab's U.S. shipments to *** accounted for *** percentage points of the *** percent decrease in U.S. producers' U.S. shipments between 2006 and 2007. While most of the downward trend is attributable to Agri-Fab, nonetheless *** also reported a decline in their U.S. shipments that year compared to 2006.

³⁴ Conference transcript, p. 72 (Harvey).

³⁵ U.S. producers' total shipments decreased by *** percent in 2007 compared to 2006 ***, and were *** percent lower in the January-March 2008 period than in the comparable period in 2007, again despite ***.

U.S. Shipments by Product Type

Table III-7 presents data on U.S. producers' U.S. shipments by product type. Between 2005 and 2007, U.S. producers' U.S. shipments of tow-behind aerators, dethatchers, and sweepers all declined, while U.S. producers' U.S. shipments of tow-behind spreaders remained relatively constant. Reflecting its relative size within the basket of TBLGs, tow-behind sweepers experienced the largest decline in absolute if not relative terms between 2005 and 2007. All products experienced declines when comparing the January-March period in 2008 with the comparable period in 2007.

Table III-7
TBLGs: U.S. producers' U.S. shipments by product type, 2005-07, January-March 2007, and January-March 2008

* * * * *

U.S. Shipments by Region

Table III-8 presents U.S. producers' U.S. shipments by region in 2007. Most U.S. producers ship TBLGs to customers in the Midwest and Southeast.

Table III-8
TBLGs: U.S. producers' U.S. shipments by region, 2007

* * * * *

U.S. PRODUCERS' IMPORTS AND PURCHASES

Two of the responding U.S. producers of TBLGs also import subject merchandise, ***. ***.
***. No U.S. producer reported purchasing 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, 2005-07, January-March 2007, and January-March 2008

* * * * *

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 generally had 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.³⁶ Not only do U.S. producers ship out of inventory to meet demand in the first quarter of each year, they also typically increase their production of

³⁶ Conference transcript, p. 62 (Cohan).

TBLGs in anticipation of the increase in demand for TBLGs in the spring, *i.e.*, increased sales at the retail level.

Table III-10

TBLGs: U.S. producers' end-of-period inventories, 2005-07, January-March 2007, and January-March 2008

* * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Table III-11 shows U.S. producers' employment-related data during the period examined.

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, 2005-07, January-March 2007, and January-March 2008

* * * * *

PART IV: U.S. IMPORTS, APPARENT U.S. 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 52 firms' import operations based on data provided in the petition and a review of proprietary Customs data. Of the 52 firms contacted, six firms provided the Commission with useable data on their import operations.¹ An additional 11 firms responded to the Commission's inquiry to indicate that they did not import TBLGs in the period examined. Table IV-1 presents data on U.S. importers of TBLGs. Table IV-2 presents information on the types of TBLGs the U.S. importers import.

Table IV-1

TBLGs: U.S. importers by source, January 2005 to March 2008 aggregated

* * * * *

Table IV-2

TBLGs: Types of TBLGs imported, January 2005 to March 2008 aggregated

* * * * *

U.S. IMPORTERS' U.S. IMPORTS

Table IV-3 and figure IV-1 present information on U.S. imports of TBLGs over the period examined.² Between 2005 and 2007, subject imports, *i.e.*, imports from China, increased by *** percent, while nonsubject imports, *i.e.*, *** imports from Mexico, increased by *** percent, resulting in an overall increase of 205.7 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 for which data is available. Nonsubject imports have the lowest average unit values of U.S. imports, reflecting a product mix issue in that those imports relate to a single type of tow-behind spreader that ***, while subject imports relate to a wider variety of TBLGs (*see* table IV-4). The average unit value of subject imports decreased noticeably between 2006 and 2007 as ***.

Table IV-3

TBLGs: U.S. imports by source, 2005-07, January-March 2007, and January-March 2008

* * * * *

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

² See section "Ratio of U.S. imports to U.S. production" for data on U.S. imports by product type.

Figure IV-1

TBLGs: U.S. imports by source, 2005-07, January-March 2007, and January-March 2008

* * * * *

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, 2005-07, January-March 2007, and January-March 2008

* * * * *

Figure IV-2 presents information on the share of U.S. importers' U.S. shipments of TBLGs by product type and source. Figure IV-3 present information on the average unit values of U.S. importers' U.S. imports of TBLGs by product type and source.

Figure IV-2

TBLGs: U.S. importers' U.S. shipments by product type and source, January 2005 to March 2008 aggregated

* * * * *

Figure IV-3

TBLGs: Average unit value of U.S. importers' U.S. shipments by product type and source, 2005-07, January-March 2007, and January-March 2008

* * * * *

As demonstrated in table IV-4 and figure IV-4, U.S. importers' U.S. shipments of subject imports, *i.e.*, shipments of imports from China, increased by *** percent from 2005 to 2007, while *** U.S. shipments of nonsubject imports, *i.e.*, shipments of imports from Mexico, increased by *** percent, resulting in an overall increase of *** percent of U.S. shipments of imports from all sources between 2005 and 2007.

Figure IV-4

TBLGs: U.S. importers' U.S. shipments of imports by source, 2005-07, January-March 2007, and January-March 2008

* * * * *

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

Table IV-5 presents information on U.S. importers' U.S. shipments by region in 2007. Most U.S. importers, as with U.S. producers, ship TBLGs to customers in the Midwest and Southeast.

Table IV-5
TBLGs: U.S. importers' U.S. shipments by region and source, 2007

* * * * *

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 market share in each period comparison for both TBLGs as a whole (table IV-6) and the four types of TBLGs (table IV-7), with the exception of tow-behind aerators which had a slightly lower market share for subject TBLGs comparing the partial year periods in 2008 and 2007. While some subject tow-behind spreaders entered in the U.S. market in 2007 and 2008, most of the U.S. market for tow-behind spreaders was served by domestically produced or nonsubject spreaders over the period examined.

Table IV-6
TBLGs: Apparent U.S. consumption and U.S. market shares, 2005-07, January-March 2007, and January-March 2008

* * * * *

Table IV-7
TBLGs: Apparent U.S. consumption and U.S. market shares by product type, 2005-07, January-March 2007, and January-March 2008

* * * * *

RATIO OF 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, 2005-07, January-March 2007, and January-March 2008

* * * * *

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 2005 and that their costs for tires and wheels have increased by *** percent over the same period.

Transportation Costs to the U.S. Market

Transportation costs for TBLGs shipped from China to the United States averaged 8.1 percent of the customs value in 2007. This estimate is derived from official import data.¹

U.S. Inland Transportation Costs

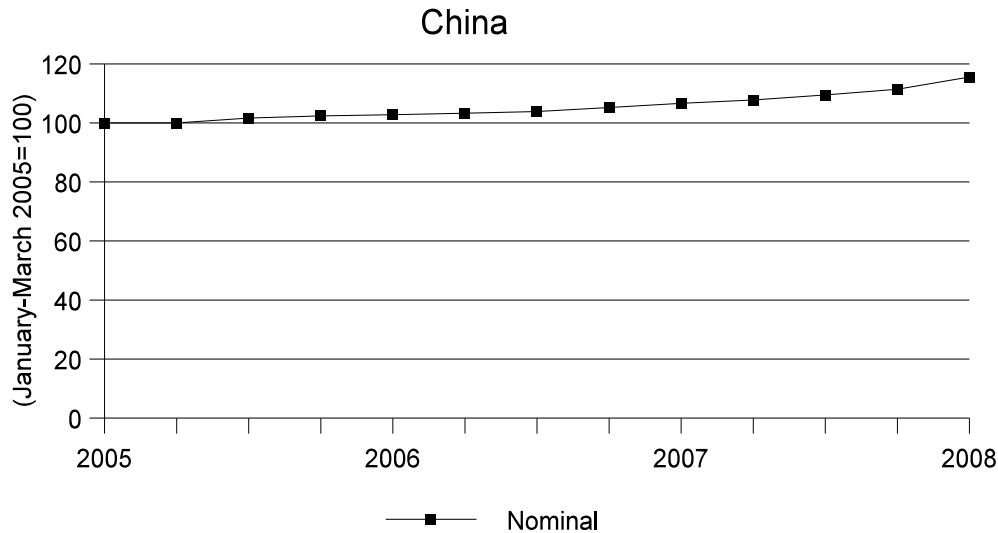
TBLGs are sold on an f.o.b. basis. U.S. producers reported that U.S. inland transportation costs of TBLGs range from *** to *** percent of the delivered price. Importers reported that U.S. inland transportation costs of TBLGs range from *** to *** percent of the delivered price.

Exchange Rate

As shown in figure V-1, while the nominal exchange rate for the Chinese yuan was pegged to the U.S. dollar during the first two quarters of the period for which data were collected in the investigation, the dollar depreciated by 15.6 percent relative to the yuan in nominal terms from January 2005 to March 2008. A real value is unavailable.

¹ The estimated cost was obtained by subtracting the customs value from the c.i.f. value of the imports for 2007 and then dividing by the customs value. This calculation used import data on HTS subheadings 8479.89.9897 and 8432.80.0000.

Figure V-1
Exchange rate: Index of the nominal exchange rate of the Chinese currency relative to the U.S. dollar, by quarters, January 2005-March 2008



Source: International Monetary Fund, International Financial Statistics, July 16, 2008.

Petitioner reports that the prices of subject imports have been trending upward, but does not know how much of this price change is related to the exchange rate of the U.S. dollar.² Importer Swisher reported that the weakening of the U.S. dollar has substantially changed its prices in the United States.³

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, while *** also reported the use of price lists.

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

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 2007. *** 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. These producers' contracts typically 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 a majority of sales (***) are on a

² Conference transcript, p. 71 (Harvey).

³ Conference transcript, p. 107 (Swisher).

short-term contract basis with the remainder being spot sales, and *** reported that *** sales were on a spot basis. These importers' contracts typically have fixed prices and do not contain meet-or-release provisions. ***.

*** of the *** responding U.S. producers reported the use of discounts based on annual volume. Other specific arrangements cited included ***. *** importers that import TBLGs from China 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. Data were requested for the period January 2005-March 2008. 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.

*** 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 2005-March 2008 and *** percent of U.S. shipments of imports from China over the same period.⁴

⁴ ***. ***. Staff requested that *** submit its delivered purchase prices from all sources; the data are presented in appendix D. E-mail from *** , July 22, 2008. ***. ***. ***.

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 2005-March 2008. For sales reported by U.S. producers, ***. For sales of products imported from China, ***.

Domestic prices of pricing products of ***. ***.

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, by quarters, January 2005-March 2008

* * * * * * *

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-March 2008

* * * * * * *

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 2005-March 2008

* * * * * * *

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 value was *** and ***.

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 an accurate price.

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 an accurate price.

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 2005-March 2008

* * * * *

Table V-5

TBLGs: Weighted-average f.o.b. prices and quantities of domestic and imported product 5 and margins of underselling, by quarters, January 2005-March 2008

* * * * *

Table V-6

TBLGs: Weighted-average f.o.b. prices and quantities of domestic and imported product 6 and margins of underselling, by quarters, January 2005-March 2008

* * * * *

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 2005-March 2008

* * * * *

Figure V-2

TBLGs: Weighted-average f.o.b prices and quantities of domestic and imported product 1, by quarters, January 2005-March 2008

* * * * *

Figure V-3

TBLGs: Weighted-average f.o.b prices and quantities of domestic and imported product 2, by quarters, January 2005-March 2008

* * * * *

Figure V-4

TBLGs: Weighted-average f.o.b prices and quantities of domestic and imported product 3, by quarters, January 2005-March 2008

* * * * *

Figure V-5

TBLGs: Weighted-average f.o.b prices and quantities of domestic and imported product 4, by quarters, January 2005-March 2008

* * * * *

Figure V-6

TBLGs: Weighted-average f.o.b prices and quantities of domestic and imported product 5, by quarters, January 2005-March 2008

* * * * *

Figure V-7
TBLGs: Weighted-average f.o.b prices and quantities of domestic and imported product 6, by quarters, January 2005-March 2008

* * * * *

Figure V-8
TBLGs: Weighted-average f.o.b prices and quantities of domestic and imported product 7, by quarters, January 2005-March 2008

* * * * *

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 63 quarterly comparisons of products 1-7, representing *** percent of the total domestic quantities reported for all pricing products. The data show that prices of imports from China were lower than the U.S. producer prices in 47 quarterly comparisons, by margins ranging from *** percent, involving *** percent of total domestic quantities reported for all pricing products. The prices of imports from China oversold U.S. producers prices in 16 quarterly comparisons, by margins ranging from *** percent, involving *** percent of total domestic quantities reported for all pricing products. *** of the instances of overselling occurred in comparisons involving products ***.

Table V-8
TBLGs: Margins of underselling/(overselling) by product, quarterly, January 2005-March 2008

* * * * *

Table V-9
TBLGs: Instances of underselling/overselling and the range and average of margins for products 1-7, January 2005-March 2008

* * * * *

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 \$***, which together account for *** percent of the value of U.S. producers' U.S. shipments during the period for which data were collected.⁹ Another U.S. producer (***) reported that it had lost sales to lower-priced imports from

⁹ Respondent also alleges that petitioner's lost sales over the period of investigation are 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 contradicts this argument, stating that ***. Petitioner's postconference brief, pp. 28-29.

Respondent also claims that petitioner's lost sales over the period of investigation are partly due to a decision by retailer Lowe's to replace some of its purchases from Agri-Fab due to a brand strategy that was allegedly unrelated to price. Respondent asserts, that, according to ***, Lowe's was selling TBLGs from Agri-Fab, both under the Agri-Fab brand name as well as under Lowe's private label and decided to replace some of its Agri-Fab purchases with John Deere product (allegedly beginning in 2005) and a new Lowe's private label product. According to ***, Lowe's chose not to source its new private label product from Agri-Fab because Agri-Fab was already producing its own branded product that would be in competition with the Lowe's private label brand, as it is allegedly preferable
 (continued...)

China since January 2005 but did not provide specific allegations. Staff contacted the *** purchasers cited in the allegations; *** responded. *** responding purchasers reported that they have switched their purchases of TBLGs from U.S. producers to suppliers of imports from China due to price, *** of which ***. The results are summarized in tables V-10 and V-11 and are discussed below.

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 occurring in *** involving *** units of *** valued at a total of \$***. It disagreed with the allegations, stating that it considers many factors including ***.
 ***.¹⁰ ***.¹¹

*** was named in *** lost sales allegations occurring in *** involving *** units of *** valued at a total of \$***. *** 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.

*** was named in *** lost revenues allegations occurring in *** involving *** units of *** for total lost revenues of \$***. While it did not respond to the specific allegations, it stated that ***.¹²

*** was named in a lost sale allegation involving *** units valued at \$*** occurring in ***. It agreed with the allegation, stating, however, that it only ordered *** units from its import supplier, which would imply 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 ***.

⁹ (...continued)

for a retailer to have a private label brand that is distinguishable from other national brands sold in the store. Respondent also claims that the Chinese supplier of the new private label product was more flexible in terms of the minimum order quantity, transportation services from China to the United States, and “the perceived value”. Respondent’s postconference brief, pp. 12-13.

¹⁰ See app. D.

¹¹ ***.

¹² ***. *** chose the 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 CONDITION OF U.S. PRODUCERS

INTRODUCTION

Four U.S. producers of TBLGs provided usable financial data on their operations on TBLGs.¹ These data are believed to account for the great majority of U.S. production of TBLGs in 2007. 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 all types except dethatchers and *** reported production and sales of only spreaders. No firms 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. The reported aggregate net sales quantities and values steadily declined from 2005 to 2007, and also declined during the comparable interim periods. In both the full year data and interim period data, net sales quantities declined more sharply than net sales values, which resulted in higher per-unit revenues in 2007 as compared to 2005, as well as during the comparable interim periods.² Despite the increases in per-unit revenues, per-unit combined operating costs and expenses (cost of goods sold (“COGS”) and selling, general, and administrative (“SG&A”) expenses) increased at a greater rate, thus operating income declined in 2007 as compared to 2005, as well as during the comparable interim periods.³

Table VI-1

TBLGs: Results of operations of U.S. producers, 2005-07, January-March 2007, and January-March 2008

* * * * *

For U.S. producers of TBLGs, per-unit net sales values increased by \$*** from 2005 to 2007, while operating costs and expenses increased by \$*** during this time frame, which led to ***. Comparing the interim periods, per-unit net sales values increased by \$***, while per-unit operating costs and expenses increased by \$***, which also resulted in *** for the period January-March 2008.⁴

¹ The U.S. producers of TBLGs are ***. Three U.S. producers reported a fiscal year end of Dec. 31. *** reported a fiscal year end of ***, but reported its financial data on a calendar-year basis. Separate income-and-loss data for U.S. producers of aerators, dethatchers, spreaders, and sweepers are presented in tables C-2 through C-5.

² Per-unit revenues initially declined from 2005 to 2006 as net sales values declined at a greater rate than net sales quantities.

³ From 2006 to 2007, operating income improved as per-unit revenue increased at a greater rate than per-unit operating costs and expenses, but was still below the level reported for 2005.

⁴ Operations on aerators, dethatchers, spreaders, and sweepers showed some variation in terms of net sales quantity, per-unit revenues, and operating income. Sweepers accounted for the largest portion of total net sales quantity during the period of investigation (**% percent in 2007), and also had the largest per-unit revenues (\$*** in 2007) during this time frame. In contrast, aerators accounted for the smallest portion of total net sales quantity during the period of investigation (**% percent in 2007), and dethatchers had the smallest per-unit revenues (\$*** in 2007) during this time frame. For aerators, dethatchers, and sweepers, operating margins ranged from mildly profitable to mildly unprofitable (**% percent to negative **% percent) during the period of investigation and trended with the overall operations on TBLGs. In contrast, spreaders had higher operating margins of **% to **% percent, and showed a steady decline in profitability during this timeframe.

While COGS and SG&A expenses increased on a per-unit basis in part due to lower sales volume, the increases in COGS were also largely affected by rising raw material costs, which rose *** percent from 2005 to 2007 and *** percent during the comparable interim periods. Raw material costs as a percentage of overall COGS steadily increased during the period, and represented *** percent of overall COGS during this timeframe. According to ***, the firm’s raw material costs were negatively impacted primarily by rising steel costs, as well as rising costs for plastic components and paper pulp.⁵

Table VI-2
TBLGs: Selected results of operations of U.S. producers, by firm, 2005-07, January-March 2007, and January-March 2008

* * * * *

While the aggregate data on TBLGs operations reveal an industry experiencing *** during the period for which data were collected, individual firm data reveal that ***, although reporting lower sales and operating profits in terms of quantity and total value, was consistently and increasingly profitable on its TBLGs operations on a per-unit basis and as a ratio to sales.⁶ In contrast, the other three firms reported moderate positive or negative operating margins during this time frame.

*** reported the largest losses during the period examined, with losses reported in three of the five reporting periods. An examination of the firm’s individual financial data on aerators, dethatchers, spreaders, and sweepers reveals that the largest losses in terms of total value and as a ratio to sales occurred on dethatchers, which reportedly lost money in all periods and had operating margins of negative *** percent to negative *** percent during the period examined. A comparison between *** on their overall TBLG financial results reveals that the magnitude of difference between the two firm’s per-unit revenues was not as great as their difference in per-unit COGS (*** reported both higher per-unit revenues and COGS), with per-unit raw material costs being notably higher (\$*** to \$***) for ***.⁷

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. The analysis shows that the decline in the operating income from 2005 to 2007, as well as during the comparable interim periods, was attributable to the higher unfavorable net cost/expense variance as compared with the favorable price variance (i.e., costs and expenses increased more than prices).

Table VI-3
TBLGs: Variance analysis on the operations of U.S. producers, 2005-07, and January-March 2007 to January-March 2008

* * * * *

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

Capital expenditures and research and development (“R&D”) expenses are shown in table VI-4. All four firms reported capital expenditures and three firms reported R&D expenses. Among the firms, *** accounted for *** of reported capital expenditures and R&D expenses. According to ***, its capital

⁵ E-mail correspondence from ***, July 24, 2008.

⁶ *** has shifted its main focus toward import operations, and represented *** of total net sales (quantity and value) in 2007.

⁷ ***.

expenditures primarily reflect ***. The firm's R&D expenses include ***.⁸ With the exception of 2005, ***.

Table VI-4
TBLGs: Capital expenditures and research and development expenses of U.S. producers, 2005-07, January-March 2007, and January-March 2008

* * * * *

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 2005 to 2007, with a decline from \$*** in 2005 to \$*** in 2007. The ROI declined irregularly during the period for which data were requested, declining by *** percentage points in 2006 before increasing by *** percentage points in 2007. The trend in the ROI was similar to the trend in operating income.

Table VI-5
TBLGs: U.S. producers' total assets and return on investment, fiscal years 2005-07

* * * * *

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

Agri-Fab	***
Brinly Hardy	***
Ohio Steel	***
Spyker	***

Anticipated Negative Effects

Agri-Fab	***
Brinly Hardy	***
Ohio Steel	***
Spyker	***

⁸ E-mail correspondence from ***, July 24, 2008.

PART VII: THREAT CONSIDERATIONS AND *BRATSK* INFORMATION

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors¹--

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

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

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

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

(V) inventories of the subject merchandise,

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

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

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.”

(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 in relation to subsidies in China is presented in Part I; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Also presented in this Part of the report is information obtained for consideration by the Commission in relation to *Bratsk* rulings.

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 5} 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.

Table VII-1

TBLGs: Data for producers in China, 2005-07, January-March 2007, January-March 2008, and projected 2008-09

* * * * *

Over the period examined, responding Chinese producers and exporters increased their production of TBLGs. Most of the increased production between 2005 and 2006 was shipped to the U.S. market, while most of the increased production between 2006 and 2007 was shipped for other export markets besides the United States. In terms of Chinese producers' projections, exports to the United States are estimated to increase as one producer, ***, resumes in 2008 its exports to the United States

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.

⁵ One of the three responding firms, ***, is located in Taiwan. Based on its questionnaire response, there was no way for Commission staff to verify whether the production of TBLGs reported in its questionnaire took place in Taiwan or on the mainland in China. Accordingly, for the purposes of the preliminary phase of these investigations, *** data are considered product of China and compiled with the other responding Chinese producers' and exporters' data.

Table VII-2

TBLGs: Data on Chinese producers' production and exports to the United States by product type, 2005-07, January-March 2007, January-March 2008, and projected 2008-09

* * * * *

at the level of its exports to the United States in 2005 (its 2006 exports to the United States were noticeably lower than in 2005) and increases those exports further in 2009 based on ***.⁶ While the other major Chinese producer to provide data on its operations, ***, maintained its projected exports to the United States at nearly its 2007 level, it projected increases in production and export shipments to other markets besides the United States based on its ***.⁷

Based on estimates provided by one of the responding Chinese producers, ***, the responding Chinese producers account for between 20 and 40 percent of production and exports to the United States of TBLGs in China.

U.S. INVENTORIES OF IMPORTED MERCHANDISE

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 on the basis that it ***.

Table VII-3

TBLGs: U.S. importers' inventories, 2005-07, January-March 2007, and January-March 2008

* * * * *

U.S. IMPORTERS' OUTSTANDING ORDERS

Table VII-4 presents data on imports arranged for importation after April 1, 2008 by quarter.

Table VII-4

TBLGs: U.S. importers' arranged imports after April 1, 2008, by quarter

* * * * *

ANTIDUMPING OR COUNTERVAILING DUTY ORDERS IN THIRD-COUNTRY MARKETS

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

⁶ *** foreign producers'/exporters' questionnaire, section II-7.

⁷ *** foreign producers'/exporters' questionnaire, section II-7.

INFORMATION ON NONSUBJECT SOURCES

“Bratsk” Considerations

As a result of the Court of Appeals for the Federal Circuit (“CAFC”) decision in *Bratsk Aluminum Smelter v. United States* (“Bratsk”), the Commission is directed to:^{8 9}

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

The 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 ***.¹⁰ The respondent counsel for Superpower argues that the Commission should conduct a full *Bratsk* analysis, indicating if an antidumping or countervailing duty order is imposed on imports of TBLGs from China, ***. The respondent counsel for Superpower admits, however, that Mexican product ***.¹¹

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. Table VII-5 presents information on the TBLG operations for the one producer in Mexico.

Table VII-5

TBLGs: Data for the producer in Mexico, 2005-07, January-March 2007, January-March 2008, and projected 2008-09

* * * * *

All Other Sources

There are no other known sources that supply TBLGs to the U.S. market.

⁸ *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2; citing *Bratsk Aluminum Smelter v. United States*, 444 F.3d at 1375.

⁹ In the silicon metal remand, Chairman Pearson noted “consistent with his views in *Lined Paper School Supplies From China, India, and Indonesia, Inv. Nos. 701-TA-442-443 and 731-TA-1095-1097 (Final)*, USITC Pub. 3884 (September 2006) at 51, that while he agrees with the Commission that the Federal Circuit’s opinion suggests a replacement/benefit test, he also finds that the Federal Circuit’s opinion could be read, not as requiring a new test, but rather as a reminder that the Commission, before it makes an affirmative determination, must satisfy itself that it has not attributed material injury to factors other than subject imports.” *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2, fn. 17. Commissioner Okun joined in those separate and dissenting views in *Lined Paper*.

¹⁰ Petitioner’s postconference brief, pp. 14-15.

¹¹ Respondent’s postconference brief, Answers to Questions of Commission Staff, p. B.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

Subject Merchandise from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in billion bits and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise*

produced in the *Subject Country*, and such merchandise from other countries.

(11)(OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 16, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-14180 Filed 6-30-08; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-457 and 731-TA-1153 (Preliminary)]

Tow-Behind Lawn Groomers From China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary phase countervailing duty investigation and a preliminary phase antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of investigation and commencement of preliminary phase countervailing duty investigation No. 701-TA-457 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of tow-behind lawn groomers ("TBLG"), currently provided for in subheadings 8432.40.00, 8432.80.00, and 8479.89.98 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of the People's Republic of China. The Commission also hereby gives notice of the institution of investigation and commencement of preliminary phase antidumping investigation No. 731-TA-1153 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of

an industry in the United States is materially retarded, by reason of imports from China of TBLGs, currently provided for in the subheadings identified above of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping and countervailing duty investigations within 45 days, or in this case by August 8, 2008. The Commission's views are due at Commerce within five business days thereafter, or by Friday, August 15, 2008.

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

DATES: *Effective Date:* June 24, 2008.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202-708-4727, russell.duncan@usitc.gov), 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.* These investigations are being instituted in response to a petition filed on June 24, 2008, by Agri-Fab, Inc., Sullivan, IL.

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

Commission countervailing and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

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

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 15, 2008, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Russell Duncan (202-708-4727) not later than July 11, 2008, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 18, 2008, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even

where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to 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 207.12 of the Commission's rules.

Issued: June 25, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-14840 Filed 6-30-08; 8:45 am]

BILLING CODE 7020-02-P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of Open Meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: November 13-14, 2008.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Charleston Place Hotel, 205 Meeting Street, Charleston, SC 29401

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502-1820.

Dated: June 23, 2008.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E8-14750 Filed 6-30-08; 8:45 am]

BILLING CODE 2210-55-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of Open Meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: November 17-18, 2008.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502-1820.

Dated: June 23, 2008.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E8-14754 Filed 6-30-08; 8:45 am]

BILLING CODE 2210-55-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Evidence.

ACTION: Notice of Open Meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: October 23-24, 2008.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: LaPosada de Santa Fe Hotel, 330 E Palace Avenue, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502-1820.

Dated: June 23, 2008.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E8-14756 Filed 6-30-08; 8:45 am]

BILLING CODE 2210-55-M

Joaquín Tremols, Acting Director, Single Family Housing Guaranteed Loan Division, Stop 0784, Room 2250, USDA Rural Development, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250-0784, telephone (202) 720-1465, E-mail joaquin.tremols@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Single Family Housing Guaranteed Loan Program.

OMB Number: 0575-0179.

Type of Request: Reinstatement of a Previously Approved Information Collection.

Abstract: Under this program, loan guarantees are provided to participating lenders who make loans to income eligible borrowers in rural areas. The purpose of this program is to promote affordable housing for low- and moderate-income borrowers in rural America.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 27 minutes per response.

Respondents: Private sector lenders participating in the Rural Development Single Family Housing Guaranteed Loan Program.

Estimated Number of Respondents: 1,800.

Estimated Number of Responses per Respondent: 130.

Estimated Number of Responses: 234,000.

Estimated Total Annual Burden on Respondents: 105,131.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, at (202) 692-0043.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of USDA, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, Stop 0742-1400 Independence Avenue, SW., Washington, DC 20250-0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 10, 2008.

James C Alsop,

Acting Administrator, Rural Housing Service.

[FR Doc. E8-16612 Filed 7-18-08; 8:45 am]

BILLING CODE 3410-XV-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Section 538 Guaranteed Rural Rental Housing Program (GRRHP) Demonstration Program for Fiscal Year 2008

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; amendment.

SUMMARY: The Rural Housing Service (RHS) is amending a notice published April 21, 2008 (73 FR 21305-21307). This action is taken to extend the application obligation date of eligible applications. This amendment is to ensure that all applications that meet program criteria and have responded accordingly will be considered in the Demonstration Program.

Accordingly, the Notice published on April 21, 2008 (73 FR 21305-21307), is amended as follows:

On page 21306, in the second column, second paragraph, under the heading "Demonstration Program Selection Process," the second paragraph is amended to read as follows: "The first round of selections into the Demonstration Program will be made on April 25, 2008. In the event there are not enough qualified requests for selection into the Demonstration Program to utilize all the available Demonstration Program set-aside funds of approximately \$13 million, then the selection process for any remaining funds will be conducted again on July 11, 2008. If needed, an additional selection process will be conducted again on September 29, 2008. All applicants will be notified of the selection results no later than 30 business days from the date of selection."

Dated: July 3, 2008.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E8-16344 Filed 7-18-08; 8:45 am]

BILLING CODE 3410-XV-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and

regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the District of Columbia Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 1 p.m. on Wednesday, August 6, 2008, at the Heritage Foundation, 214 Massachusetts Avenue, NE., Washington, DC 20002. The purpose of the meeting is to plan for a briefing on education issues in the District of Columbia.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by Friday, September 5, 2008. The address is Eastern Regional Office, 624 Ninth Street, NW., Suite 740, Washington, DC 20425. Persons wishing to email their comments or to present their comments verbally at the meeting, or who desire additional information should contact Alfreda Greene, Secretary, at 202-376-7533, or by e-mail: agreene@usccr.gov.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, <http://www.usccr.gov>, or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, July 16, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8-16635 FILED 7-18-08; 8:45 am]

BILLING CODE 6335-01-P

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: Initiation of Antidumping Duty Investigation

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

DATES: *Effective Date:* July 21, 2008.

FOR FURTHER INFORMATION CONTACT:

Thomas Martin or Maisha Cryor, 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) 482-3936 or (202) 482-5831, respectively.

SUPPLEMENTARY INFORMATION:**The Petition**

On June 24, 2008, the Department of Commerce (“the Department”) received a Petition concerning imports of certain non-motorized tow behind lawn groomers and certain parts thereof (“lawn groomers”) from the People’s Republic of China (“PRC”) filed in proper form by Agri-Fab Inc. (“Agri-Fab”, hereafter referred to as “Petitioner”). See Petition for the Imposition of Antidumping Duties: Certain Tow Behind Lawn Groomers and Parts Thereof from the People’s Republic of China, dated June 24, 2008 (“Petition”). On June 27, July 3, July 7, and July 8, 2008, the Department issued requests for additional information and clarification of certain areas of the Petition. Based on the Department’s requests, Petitioner filed supplemental information on the following topics: general issues (*i.e.*, scope, injury, and industry support) and U.S. price and normal value (“NV”) calculations on July 1, 2008; U.S. price and NV calculations on July 8, 2008; and scope and certain revisions to NV calculations on July 9, 2008. In addition, Petitioner provided additional information regarding an adjustment to NV on July 9, 2008, and additional clarification of the scope of the Petition on July 10, 2008. See Memorandum from Mark Manning, Program Manager, to the File, “Phone Conversation With Agri-Fab Concerning Line-Item in Normal Value Calculation,” dated July 9, 2008; and Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, “Request to Agri-Fab, Inc. via Telephone Conversation, July 10, 2008.” Petitioner also provided additional information on industry support on July 10, 2008. See Memorandum from Meredith A.W. Rutherford to the File, Petitions for the Imposition of Antidumping and Countervailing Duties—Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Phone Call with Petitioner Regarding Industry Support, dated July 9, 2008. Lastly, Petitioner provided an additional clarification to the scope on July 11, 2008. See Memorandum from Maisha Cryor,

Senior International Trade Compliance Analyst, to the File, “Scope Clarification,” dated July 11, 2008.

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

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

Period of Investigation

The period of investigation (“POI”) is October 1, 2007, through March 31, 2008. See 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise covered by this investigation is certain lawn groomers and certain parts thereof. See Appendix I to this notice for a complete description of the merchandise covered by this investigation.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments by August 4, 2008, which is 21 calendar days from the date of signature of this notice.¹ Comments should be addressed to Import Administration’s APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

¹ Twenty calendar days after the date of signature is Sunday, August 3, 2008.

Comments on Product Characteristics for Antidumping Duty Questionnaire

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

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

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaire, the Department must receive public comments at the above-referenced address by August 4, 2008, and receive rebuttal comments by August 11, 2008.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total

production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

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

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

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that certain tow behind lawn groomers and certain lawn groomer parts constitute a single domestic like product; and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* "Antidumping Duty Investigation Initiation Checklist: Certain Tow Behind Lawn Groomers

and Certain Parts Thereof from the People's Republic of China ("Initiation Checklist"), Analysis of Industry Support for the Petition at Attachment II, on file in the Central Records Unit ("CRU"), Room 1217 of the main Department of Commerce building.

With regard to section 732(c)(4)(A) of the Act, in determining whether Petitioner has standing (*i.e.*, the domestic workers and producer supporting the Petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition), we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of Investigation" section, above. To establish industry support, Petitioner provided its sales volume of the domestic like product for calendar year 2007, and compared that to total sales volume of the domestic like product for the industry. Petitioner stated that it "used sales volumes * * * as a surrogate for production, because it does not have access to the actual production data of other domestic {lawn groomer} producers." *See* Petition, Volume 1, at 2. We have relied upon the data Petitioner provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II (Analysis of Industry Support for the Petition).

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

support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Initiation Checklist at Attachment II (Analysis of Industry Support for the Petition).

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department initiate. *See* PRC Initiation Checklist at Attachment II (Analysis of Industry Support for the Petition).

Allegations and Evidence of Material Injury and Causation

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

Allegations of Sales at Less Than Fair Value

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

section 776 of the Act in our preliminary or final determination, we will reexamine the information and revise the margin calculations, if appropriate.

Export Price

Petitioner relied on one U.S. price quote for lawn groomers manufactured in the PRC and offered for sale in the United States. The price quoted was for one type of lawn groomer, *i.e.*, lawn sweeper, falling within the scope of the Petition. See Petition, Volume II, at 8 and Exhibit II-1. Petitioner deducted foreign inland freight and foreign brokerage and handling from this price. See Petition, Volume II, at 7-8 and Exhibit II-2.

Normal Value

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

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

Petitioner argues that India is the appropriate surrogate country for the PRC because it is at a comparable level of economic development and it is a significant producer of comparable merchandise, specifically hand trucks. See Petition, Volume II, at 3. Petitioner asserts that no potential surrogate countries manufacture lawn groomers. See Petition, Volume II, at 2. Based on the information provided by Petitioner, the Department believes that the use of India as a surrogate country is appropriate for purposes of initiation. However, after initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioner calculated NV and a dumping margin for the U.S. price, discussed above, using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioner calculated NV based on its own consumption rates for producing 42-inch lawn sweepers in 2007. See Petition, Volume II, at 5, and Initiation Checklist. Petitioner states that its production experience is representative of the production process used in the PRC because all of the material inputs and processing are unlikely to be materially different for a Chinese producer of lawn groomers. See Petition, Volume II, at 3-5.

Petitioner valued the factors of production based on reasonably available, public surrogate country data, including official Indian government import statistics and sources recently used in other PRC proceedings conducted by the Department. Since Petitioner was unable to find input prices contemporaneous with the POI for electricity and gas, it adjusted for inflation using the wholesale price index for India, as published by the International Monetary Fund, *International Financial Statistics*. See July 8, 2008, supplemental to the Petition, at Exhibit 3. In addition, Petitioner made currency conversions, where necessary, based on the POI-average rupee/U.S. dollar exchange rate, as reported on the Department's Web site. See Petition, Volume II, at Exhibit II-4. Petitioner calculated a labor cost for the PRC based upon its own experience. See Petition, Volume II, at 6. To value labor, Petitioner used a labor rate of \$1.04 per hour, as published on the Department's Web site, in

accordance with the Department's regulations. See 19 CFR 351.408(c)(3) and the Initiation Checklist. For purposes of initiation, the Department determines that the surrogate values used by Petitioner are reasonably available and, thus, acceptable for purposes of initiation.

Petitioner based factory overhead expenses, selling, general and administrative expenses, and profit, based on the experience of Rexello Castors Private Ltd. ("Rexello"), an Indian manufacturer of comparable merchandise, namely hand trucks. See Petition, Volume II, at 7. For purposes of initiation, the Department finds Petitioner's use of Rexello's most recently available financial statement to calculate the surrogate financial ratios appropriate.

Fair Value Comparison

Based on the data provided by Petitioner, there is reason to believe that imports of lawn groomers from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the revised estimated dumping margin for lawn groomers from the PRC is 154.72 percent. See *Initiation Checklist* at II-9.

Initiation of Antidumping Investigation

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

Respondent Selection

In this investigation, the Department will request quantity and value information from all known exporters and producers identified in the Petition. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents. The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. See *Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of*

China: Initiation of Antidumping Duty Investigation, 73 FR 10221, 10225 (February 26, 2008); and *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005). Appendix II of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters/producers no later than August 4, 2008. In addition, the Department will post the quantity and value questionnaire along with filing instructions on the Import Administration Web site, at <http://ia.ita.doc.gov/ia-highlights-and-news.html>. The Department will send the quantity and value questionnaire to those PRC companies identified in the July 8, 2008, supplement to the Petition, at Exhibit 2.

Separate Rates

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

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates/Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note,

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

See Separate Rates/Combination Rates Bulletin, at 6.

Distribution of Copies of the Petition

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

International Trade Commission Notification

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

Preliminary Determination by the International Trade Commission

The ITC will preliminarily determine, no later than August 8, 2008, whether there is a reasonable indication that imports of lawn groomers from the PRC are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination with respect to this investigation will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

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

Dated: July 14, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigations²—Lawn Groomers From the People's Republic of China

The scope of these investigations covers certain non-motorized tow behind lawn groomers ("lawn groomers"), manufactured from any material, and certain parts thereof.

² The scope is applicable to both the antidumping duty and countervailing duty investigations of lawn groomers from the People's Republic of China.

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 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, 8432.90.0030, 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 these investigations.

Appendix II

Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Tariff Act of 1930 (as amended) permits us to investigate (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume and value of the subject merchandise that can reasonably be examined.

In the charts below, please provide the total quantity (in pieces) and total value (in U.S. dollars) of all your sales of merchandise covered by the scope of this investigation (see Appendix I of this notice), produced in the PRC, and exported/shipped to the United States during the period October 1, 2007, through March 31, 2008.

Market	Dethatchers			Sweepers			Aerators			Spreaders		
	Total quantity	Terms of sale	Total value (USD)	Total quantity	Terms of sale	Total value (USD)	Total quantity	Terms of sale	Total value (USD)	Total quantity	Terms of sale	Total value (USD)
United States												
1. Export Price Sales												
2. a. Exporter name												
b. Address												
c. Contact												
d. Phone No												
e. Fax No												
3. Constructed Export Price Sales												
4. Further Manufactured Sales												
Total Sales												

TOTAL QUANTITY AND VALUE OF ALL LAWN GROOMERS AND PARTS THEREOF

Market	Total quantity (pieces)	Terms of sale	Total value (U.S. dollars)
United States			
1. Export Price Sales			
2. a. Exporter name			
b. Address			
c. Contact			
d. Phone No			
e. Fax No			
3. Constructed Export Price Sales			
4. Further Manufactured Sales			
Total Sales			

Total Quantity

Please report quantity on a piece basis.

Terms of Sales

Please report all sales on the same terms, such as "free on board" at port of export.

Total Value

All sales values should be reported in U.S. dollars. Please provide any exchange rates used and their respective dates and sources.

Export Price Sales

Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated customer occurs before importation into the United States.

Please include any sales exported by your company directly to the United States.

Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

Constructed Export Price Sales

Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated customer occurs after importation. However, if the first sale to the unaffiliated customer is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.

Please include any sales exported by your company directly to the United States.

Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

Further Manufactured Sales

Further manufacture or assembly (including re-packing) sales ("further manufactured sales") refers to merchandise that undergoes further manufacture or assembly in the United States before being sold to the first unaffiliated customer.

Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.

[FR Doc. E8-16625 Filed 7-18-08; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-863]

Honey from the People's Republic of China: Final Results and Rescission, In Part, of Aligned Antidumping Duty Administrative Review and New Shipper Review

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

SUMMARY: On January 16, 2008, the Department published the preliminary results of the aligned fifth administrative review and tenth new shipper review of the antidumping duty order on honey from the People's Republic of China ("PRC"). See *Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 2890 (January 16, 2008) ("Preliminary Results"). These aligned reviews cover seven exporters or producer/exporters: (1) Dongtai Peak Honey Industry Co., Ltd. ("Dongtai Peak"); (2) Zhejiang Native Produce & Animal By-Products I/E Group Corporation ("Zhejiang Native"); (3) Wuhu Qinshi Tangye Co., Ltd. ("Wuhu Qinshi"); (4) Jiangsu Light Industry Products Imp & Exp (Group) Corp. ("Jiangsu Light"); (5) Qinhuangdao Municipal Dafeng Industrial Co., Ltd. ("QMD"); (6) Inner Mongolia Altin Bee-Keeping ("IMA"), and (7) QHD Sanhai Honey Co., Ltd. ("QHD Sanhai"). For these final results, the Department finds that Wuhu Qinshi, Jiangsu Light, QMD, and IMA failed to cooperate by not acting to the best of their ability to comply with the Department's request for information and, as a result, have been assigned a rate based on adverse facts available ("AFA"). The Department has assigned Dongtai Peak and Zhejiang Native a separate rate for non-selected entities based on the calculation proposed by the Department.¹ Finally, after reexamining the *bona fides* of QHD Sanhai's single sale, the Department finds that sale is not a *bona fide* transaction; therefore, for these final results, the Department has rescinded the review with respect to QHD Sanhai. The period of review ("POR") is December 1, 2005, through November 30, 2006. See "Final Results of Review" section below.

EFFECTIVE DATE: July 21, 2008.

¹ See April 18, 2008, letter from the Department of Commerce, to All Interested Parties, regarding 2005/2006 Administrative Review of Honey from the People's Republic of China ("April 2008, Letter").

FOR FURTHER INFORMATION CONTACT:

Bobby Wong or Susan Pulongbarit, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0409 or (202) 482-4031, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On January 16, 2008, we published in the *Federal Register* the preliminary results of the aligned 2005/2006 administrative and new shipper reviews. See *Preliminary Results*. The POR is December 1, 2005, through November 30, 2006.

On April 18, 2008, the Department invited parties to comment in their case briefs on the Department's proposed methodology to calculate: 1) a rate for Zhejiang Native and Dongtai Peak, the separate rate entities in the instant review that were not selected for individual examination; and 2) a per-kilogram cash deposit rate for the separate rate entities and the PRC-wide entity. See *Changes Since the Preliminary Results* section below.

On April 25, 2008, the Department received case briefs from QHD Sanhai, Zhejiang Native, and the American Honey Producers Association and the Sioux Honey Association (collectively, "petitioners"). On May 6, 2008, the Department received rebuttal briefs from QHD Sanhai and petitioners. On May 20, 2008, the petitioners submitted new factual information on the record of the review regarding QHD Sanhai's U.S. customer. On June 13, 2008, the Department accepted petitioners' submission of new factual information and invited comments from parties regarding the new information. On June 23, 2008, the Department received comments from QHD Sanhai regarding the new factual information.

Scope of the Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 14, 2008.

David M. Spooner,
Assistant Secretary for Import
Administration.

Appendix I

List of Issues

Company-Specific Issues

Comment 1: The *Bona Fides* of QHD Sanhai's Single POR Sale
Comment 2: Selection of Mandatory Respondents—Zhejiang
Comment 3: Selection of the Appropriate Separate Rate Applied to Zhejiang's Sales

General Issues

Comment 4: Selection of Appropriate Surrogate Value for Raw Honey
Comment 5: Selection of Appropriate Surrogate Values—Coal, Labels, and Aluminum Seals
[FR Doc. E8-16624 Filed 7-18-08; 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: Initiation of Countervailing Duty Investigation

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

EFFECTIVE DATE: July 21, 2008.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Paul Matino, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482-3586 and (202) 482-4146, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On June 24, 2008, the Department of Commerce (the Department) received a petition filed in proper form by Agri-Fab, Inc. (petitioner), domestic producers of certain tow-behind lawn groomers and certain parts thereof (lawn groomers) from the People's Republic of China (PRC). On June 27, 2008, the Department issued requests for additional information and clarification of certain areas of the petition involving general issues and the countervailable

subsidy allegations. Based on the Department's request, petitioner timely filed additional information concerning the petition on July 2, 2008. On June 27 and July 7, 2008, the Department issued requests for additional information and clarification of certain areas of the petition. Based on the Department's requests, petitioner filed supplemental information on the following topics: general issues (*i.e.*, scope, injury, and industry support) and scope on July 9, 2008. In addition, petitioner provided an additional clarification of the scope of the Petition on July 10, 2009. See Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, "Request to Agri-Fab, Inc. via Telephone Conversation, July 10, 2008." Petitioner also provided additional information on industry support on July 10, 2008. See Memorandum from Meredith A.W. Rutherford to the File, Petitions for the Imposition of Antidumping and Countervailing Duties – Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Phone Call with Petitioner Regarding Industry Support, dated July 9, 2008. Lastly, petitioner provided an additional clarification to the scope on July 11, 2008. See Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, "Scope Clarification," July 11, 2008.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), petitioner alleges that manufacturers, producers, or exporters of lawn groomers in the PRC received countervailable subsidies within the meaning of section 701 of the Act, and that imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and petitioner has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department to initiate (*see infra*, "Determination of Industry Support for the Petition").

Period of Investigation

The anticipated period of investigation (POI) is calendar year 2007. See 19 CFR 351.204(b)(2).

Scope of the Investigation

The merchandise covered by this investigation is certain lawn groomers and certain parts thereof. See Attachment I to this notice for a

complete description of the merchandise covered by this investigation.

Comments on Scope of the Investigation

During our review of the petition, we discussed the scope with petitioner to ensure that it is an accurate reflection of the merchandise for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by August 4, 2008, which is 21 calendar days from the date of signature of this notice.¹ Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the People's Republic of China (the GOC) for consultations with respect to the countervailing duty petition. The Department held these consultations on July 9, 2008. See Memorandum to the File, *Petition on Certain Tow Behind Lawn Grooming Products and Certain Parts Thereof from the People's Republic of China: Consultations with the Government of the People's Republic of China*, July 11, 2008 and on file in the Central Records Unit (CRU), Room 1117 of the main Commerce Building.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act, provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the

¹ Twenty calendar days after the date of signature is Sunday, August 3, 2008.

petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v.*

United States, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

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

With regard to the domestic like product, petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that certain tow behind lawn groomers and certain lawn groomer parts constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a

discussion of the domestic like product analysis in this case, *see Countervailing Duty Investigation Initiation Checklist: Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China (Initiation Checklist)*, Industry Support at Attachment II, on file in the CRU.

In determining whether petitioner has standing (*i.e.*, those domestic workers and producers supporting the petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition), we considered the industry support data contained in the petition with reference to the domestic like product as defined in the "Scope of Investigation" section above. To establish industry support, petitioner provided its sales volume of the domestic like product for calendar year 2007, and compared that to total sales volume of the domestic like product for the industry. Petitioner stated that it "used sales volumes . . . as a surrogate for production, because it does not have access to the actual production data of other domestic {lawn groomer} producers." *See* Petition, Volume 1, at 2. We have relied upon data petitioner provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II (Analysis of Industry Support for the Petition).

The Department's review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that petitioner has established industry support. First, the Petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* Section 702(c)(4)(D) of the Act. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(I) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry

expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See Initiation Checklist* at Attachment II (Analysis of Industry Support for the Petition).

The Department finds that petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department initiate. *See Initiation Checklist* at Attachment II (Analysis of Industry Support for the Petition).

Injury Test

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

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of lawn groomers from the PRC are benefitting from countervailable subsidies and that such imports are causing or threaten to cause, material injury to the domestic industry producing lawn groomers. In addition, petitioner alleges that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry's injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production and capacity utilization, reduced shipments, reduced employment, and an overall decline in financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist* at Attachment III (Analysis of Injury Allegations and Evidence of Material Injury and Causation).

Subsidy Allegations

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested

party files a petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to petitioner supporting the allegations. The Department has examined the countervailing duty petition on certain lawn groomers and parts thereof from the PRC and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of certain lawn groomers and parts thereof from the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, see *Initiation Checklist*.

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

A. National Preferential Income Tax Programs

1. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program)
2. Income Tax Reductions for Export-Oriented Enterprises
3. Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise

B. Value Added Tax (VAT) and Indirect Tax Programs at the National Level

1. Income Tax Credits for FIEs Purchasing Domestically Produced Equipment
2. Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies
3. VAT refunds for FIEs Purchasing Domestically Produced Equipment
4. Import Tariff and VAT Exemptions for Encouraged Industries Importing Equipment for Domestic Operations
5. Export Incentive Payments Characterized as "VAT Rebates"

C. Provision of Hot-Rolled Steel at Less Than Adequate Remuneration

D. Provincial and Local Income Tax Programs

1. Reduced Income Taxes Based on Geographic Location (Zhejiang and Shandong Provinces)
2. Income Tax Preferential Programs for FIEs in Zhejiang Province

3. VAT Refunds for Encouraged FIEs Purchasing Domestic Equipment in Zhejiang Province
4. VAT and Import Tariff Rebates for Encouraged FIEs Purchasing Imported Equipment in Zhejiang Province
5. Export-Based "Reward" Subsidies for Enterprises in Zhejiang Province
6. Refunds of Legal Fees Paid in Antidumping and Countervailing Duty Investigations in Zhejiang Province and Jiashan County
7. Income Tax Programs in Huimin Industrial Park in Zhejiang Province
8. Export-Based "Reward" Subsidies for Enterprises in Huimin Industrial Park in Zhejiang Province
9. VAT and Import Tariff Rebates for Encouraged FIEs Purchasing Imported Equipment in Huimin Industrial Park in Zhejiang Province
10. Income Tax Programs in the Hangzhou Export Processing Zone in Zhejiang Province
11. Export Incentive Payments in the Form of VAT Rebates for Companies Located in the Hangzhou Export Processing Zone in Zhejiang Province

E. Preferential Policies and Benefits for Enterprises Located in Shandong Province

1. Provision of Land for Less Than Adequate Remuneration for Export-Oriented FIEs for Enterprises Located in Shandong Province

F. Preferential Policies and Benefits in Qingdao Municipality

1. Income Tax Programs for FIEs Located in Qingdao Municipality
2. Income Tax Offsets and/or Refunds for FIEs Purchasing Domestic Equipment in Qingdao Municipality
3. VAT and Import Tariff Rebates for Encouraged FIEs Purchasing Imported Equipment in Qingdao Municipality
4. Provision of Land for Less Than Adequate Remuneration for Export-Oriented FIEs Located in Qingdao Municipality

G. Preferential Policies and Benefits for Enterprises Located in the Lingang Processing Industrial Zone in Qingdao Municipality

1. Income Tax Programs in the Lingang Processing Industrial Zone
2. VAT and Import Tariff Rebates for Encouraged FIEs Purchasing Imported Equipment in the Lingang Processing Industrial Zone

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

1. Preferential Loans Pursuant to the Iron and Steel Policy
 2. Preferential Lending Policies in Pursuant to Provincial Five-Year Plans (Shandong and Zhejiang Provinces)
- For further explanation of the Department's decision not to investigate these programs, see *Initiation Checklist*.

Application of the Countervailing Duty Law to the PRC

The Department has treated the PRC as a non-market economy (NME) country in all past antidumping duty investigations and administrative reviews. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, (TRBs) From the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *TRBs from the People's Republic of China: Final Results of 2001-2002 Administrative Review*, 68 FR 70488 (December 18, 2003). In the final affirmative countervailing duty determination on coated free sheet paper from the PRC, the Department determined that the current nature of the PRC economy does not create obstacles to applying the necessary criteria in the CVD law. See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and the accompanying Issues and Decision Memorandum at Comment 1; see also *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) and accompanying Issues and Decision Memorandum at Comment 1. Therefore, because petitioner has provided sufficient information to support its allegations to meet the statutory criteria for initiating a countervailing duty investigation of certain tow behind lawn groomers and parts thereof from the PRC, initiation of a countervailing duty investigation is warranted in this case.

Respondent Selection

To determine the total and relative volume and value of import data for each potential respondent, the Department normally relies on Customs and Border Protection import data for the POI. However, in the instant proceeding, the Harmonized Tariff Schedule of the United States (HTSUS) categories that include subject merchandise are very broad, and include products other than products subject to this investigation. Further, imports of subject merchandise, as estimated by petitioner, account for only 3.8 percent by value of imports under the relevant HTSUS categories. Therefore, because of the unique circumstances of this case, the Department will issue "Quantity and Value Questionnaires" to potential respondents for the purposes of respondent selection.

The Department requires that the respondents submit a response to the quantity and value questionnaire. See, e.g., *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008). This response must be submitted by all exporters/producers no later than July 28, 2008. The Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration's website, at <http://ia.ita.doc.gov/ia-highlights-and-news.html>. The Department will send the quantity and value questionnaire to those PRC companies identified in the July 8, 2008, Supplement to the Petition, at Exhibit 2.

Distribution of Copies of the Petition

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

ITC Notification

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

Preliminary Determination by the ITC

The ITC will preliminarily determine, by no later than August 8, 2008, whether there is reasonable indication that imports of subsidized certain tow behind lawn groomers and parts thereof from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry.

See Section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

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

Dated: July 14, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Scope of the Countervailing Duty Investigation Lawn Groomers from the People's Republic of China

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 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 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 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.

[FR Doc. E8-16627 Filed 7-18-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Manufacturing and Services' Sustainable Manufacturing Initiative; Update

ACTION: Notice of first round of regional showcase tours in support of Commerce's Sustainable Manufacturing Initiative; request for suggestions of other cities and regions to be considered for future tours.

SUMMARY: The International Trade Administration's Manufacturing & Services Unit is planning a new project as part of its Sustainable Manufacturing Initiative, to be known as "SMART," which through a series of regional tours across the United States will showcase sustainable manufacturing practices. SMART ("Sustainable Manufacturing's American Regional Tours") will travel to a number of cities and regions in order to demonstrate the feasibility and viability of sustainable manufacturing practices for U.S. firms.

DATES: Submit comments no later than 30 days after the date of this notice.

ADDRESSES: Address all comments concerning this notice to Sustainable Manufacturing's American Regional Tours, U.S. Department of Commerce, Room 2213, 1401 Constitution Ave., NW., Washington, DC 20230 (or via the Internet at susmanuf@mail.doc.gov).

FOR FURTHER INFORMATION CONTACT: Morgan Barr in Manufacturing & Services' Office of Trade Policy Analysis, 202-482-3703.

SUPPLEMENTARY INFORMATION: Sustainable manufacturing practices in the United States have become increasingly popular in recent years as companies look for new ways to make more efficient use of resources, ensure compliance with domestic and international regulations related to environment and health, enhance the marketability of their products and services, and last but not least, increase profitability. As the trend towards sustainable manufacturing practices grows, so do its implications for U.S. global competitiveness and firm profitability.

At the Department of Commerce, one of our main goals is to foster domestic and international conditions for doing business that allow U.S. firms to successfully compete as globalization evolves. Evidence has shown that firms incorporating both environmentally and economically sustainable manufacturing processes can gain competitive advantages by achieving inherent cost savings (i.e., improving their energy efficiency, minimizing raw materials usage, etc.) while at the same time reaping societal benefits for being good stewards of the environment. Many U.S. firms have demonstrated that being environmentally sustainable can also mean being more profitable.

In order to provide effective and continued support to U.S. companies in their sustainable manufacturing efforts, Commerce's Manufacturing and Services (MAS) unit has launched a Sustainable Manufacturing Initiative and public-private dialogue that aims to (a) identify U.S. industry's most pressing sustainable manufacturing challenges and (b) facilitate public and private sector efforts to address these challenges.

To help maintain and enhance forward momentum on this initiative, MAS is introducing its SMART project, which implements one of the four "next steps" identified by the Initiative's participants at MAS's September 2007 conference and enumerated in the April 2008 **Federal Register** notice (Vol. 73, No. 76/Friday, April 18, 2008): leading regional showcase tours to promote sustainable manufacturing.

Numerous U.S. companies have voiced concerns over the lack of visibility that sustainable manufacturing receives nationwide and the lack of information U.S. manufacturers possess in this field. In order to continue spreading awareness of sustainable manufacturing's benefits, both to U.S. global competitiveness and the environment, MAS will hold the first round of SMART cities and regions: St. Louis, MO (July 28, 2008), Grand Rapids, MI (September 3, 2008), and Rochester, NY (September 23, 2008).

SMART city events will most likely include tours of local manufacturing facilities that showcase those firms that are incorporating sustainable manufacturing techniques into their production processes or have facilities that are otherwise sustainable. The goal of these tours is to demonstrate to other similarly situated firms in the area that incorporating sustainable manufacturing techniques into the production cycle is not cost-prohibitive and, in fact, can help the long-term economic viability of American manufacturers.

APPENDIX B
CONFERENCE WITNESSES

CALENDAR OF PUBLIC CONFERENCE

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

Subject: Certain tow-behind lawn groomers, and parts thereof, from China
Inv. Nos.: 701-TA-457 and 731-TA-1153 (Preliminary)
Date and Time: July 15, 2008 - 9:30 a.m.

In Support of the Imposition of Antidumping and Countervailing Duties:

Katten Muchin Rosenman LLP
Chicago, IL
on behalf of

Agri-Fab, Inc.

Ronald Harshman, President and Chairman, AF Holding Co.
Michael Cohan, President, Agri-Fab, Inc.
Gary Harvey, Vice President, Finance, Agri-Fab, Inc.

Mark Zolno)
Kazumune Kano) -- OF COUNSEL
John Smirnow)

In Opposition to the Imposition of Antidumping and Countervailing Duties:

Riggle & Craven, Attorneys at Law
Chicago, IL
on behalf of

Jiashan Superpower Tools Co., Ltd.

David Craven) -- OF COUNSEL

Garvey Schubert Barer
Washington, DC
On behalf of

Swisher Mower and Machine Co.

Wayne Swisher, President and CEO, Swisher Mower and Machine Co.

Lizbeth R. Levinson) -- OF COUNSEL

APPENDIX C
SUMMARY TABLES

Table C-1

TBLGs: Summary data concerning the U.S. market, 2005-07, January-March 2007, and January-March 2008

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Table C-2

Tow-behind aerators: Summary data concerning the U.S. market, 2005-07, January-March 2007, and January-March 2008

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Table C-3

Tow-behind dethatchers: Summary data concerning the U.S. market, 2005-07, January-March 2007, and January-March 2008

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Table C-4

Tow-behind spreaders: Summary data concerning the U.S. market, 2005-07, January-March 2007, and January-March 2008

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Table C-5

Tow-behind sweepers: Summary data concerning the U.S. market, 2005-07, January-March 2007, and January-March 2008

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APPENDIX D

DELIVERED PURCHASE PRICES AS REPORTED BY ***

Table D-1

TBLGs: Delivered purchase prices and quantities of domestic and imported product 1 reported by *, by quarters, January 2005-March 2008**

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Table D-2

TBLGs: Delivered purchase prices and quantities of domestic and imported product 4 reported by *, by quarters, January 2005-March 2008**

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Table D-3

TBLGs: Delivered purchase prices and quantities of domestic and imported product 5 reported by *, by quarters, January 2005-March 2008**

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Table D-4

TBLGs: Delivered purchase prices and quantities of domestic and imported product 6 reported by *, by quarters, January 2005-March 2008**

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Table D-5

TBLGs: Delivered purchase prices and quantities of domestic and imported product 7 reported by *, by quarters, January 2005-March 2008**

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Figure D-1

Delivered purchase prices and quantities of domestic and imported product 1 reported by *, by quarters, January 2005-March 2008**

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Figure D-2

Delivered purchase prices and quantities of domestic and imported product 6 reported by *, by quarters, January 2005-March 2008**

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Figure D-3

Delivered purchase prices and quantities of domestic and imported product 7 reported by *, by quarters, January 2005-March 2008**

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