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DEPARTMENT OF COMMERCE

International Trade Administration

(C-570-942)

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

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

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

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

SUPPLEMENTARY INFORMATION

The Petition

On July 31, 2008, the Department of Commerce (the "Department") received a petition filed in proper form by Nashville Wire Products Inc., SSW Holding Company, Inc., United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, and the International Association of Machinists and Aerospace Workers, District Lodge 6 (Clinton, IA) (the "petitioners"), domestic producers of certain kitchen appliance shelving and racks ("kitchen shelving and racks"). In response to the Department's requests, the petitioners provided timely information supplementing the petition on August 13 and 15, 2008.

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

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

Period of Investigation

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

Scope of the Investigation

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

-- shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or

-- baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or

--side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or

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

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

Comments on the Scope of the Investigation

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

The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the PRC for consultations with respect to the countervailing duty petition. The Department held these consultations in Beijing, China, with representatives of the Government of the PRC on August 15, 2008. See the Memorandum to The File, entitled, “Consultations with Officials from the Government of the People’s Republic of China” (August 15, 2008) on file in the CRU of the Department of Commerce, Room 1117.

Determination of Industry Support for the Petition

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

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a

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

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

With regard to the domestic like product, the petitioners contend that there are two domestic like products: certain refrigeration shelving and certain oven racks. The petitioners note that the two like products, when considered together, correspond to the product scope description. Based on our analysis of the information submitted on the record, we have determined that refrigeration shelving and certain oven racks constitute two domestic like products, and we have analyzed industry support in terms of those domestic like products. For a

discussion of the domestic like product analysis in this case, see “Countervailing Duty Investigation Initiation Checklist: Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China (“Initiation Checklist”), Industry Support at Attachment II, on file in the CRU, Room 1117 of the main Department of Commerce building.

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

The Department’s review of the data provided in the petition, supplemental submissions, and other information readily available to the Department indicates that petitioners have established industry support. First, the petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like products and, as such, the Department is not required to take further action in order to evaluate industry support (i.e., polling). See section 702(c)(4)(D) of the Act and Initiation Checklist at Attachment II (Industry Support). Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the

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

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

Injury Test

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

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of certain refrigeration shelving and certain oven racks from the PRC are benefitting from countervailable subsidies and that such imports are causing or threaten to cause, material injury to the domestic industries producing certain refrigeration shelving and certain oven racks. In addition, the petitioners allege that subsidized imports exceed

the negligibility threshold provided for under section 771(24)(A) of the Act.

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

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

A. Income Tax Programs

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

B. Indirect Tax Programs and Import Tariff Programs

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

C. Provincial/Local Subsidy Programs

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

Guangdong Province:

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

Zhejiang Province

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

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

25. Wire Rod and Nickel

For further information explaining why the Department is investigating these programs, see Initiation Checklist.

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

A. Government Restraints on Exports

1. Wire Rod and Nickel

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

B. Preferential Lending

1. Preferential policy loans to favored industries, including the electrical appliance industry in Guangdong Province

The petitioners allege that the Guangdong province's five-year plan stipulates that the provincial government will actively coordinate financing from the financial market. According to this policy, the provincial government will support the home electric appliances industry, including suppliers of parts or components, by coordinating financial institutions to assemble

funds to stimulate investments in the form of bank credit or loans. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. For example, there is insufficient evidence that kitchen shelving and racks products are within the scope of the provincial government's economic development plans. Moreover, there is no clear indication that any such plans include lending to the kitchen shelving and racks producers. Therefore, we do not plan to investigate this program.

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

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

C. Income Tax Programs

1. Tax reduction for enterprises making little profit

Petitioners allege that “enterprises making little profit” pay reduced income taxes and that such enterprises comprise a *de jure* specific group. Petitioners have not established with reasonably available evidence that “enterprises making little profit” are a specific group pursuant

to section 771(5A)(D) of the Act. Therefore, we do not plan to investigate tax reductions for enterprises making little profit.

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

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

D. Indirect Tax Programs

1. Import tariff and VAT refunds to promote the development of equipment manufacturing in China

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

2. VAT exemptions for the “encouragement of investment by Taiwan Compatriots”

Petitioners allege that the Chinese government offers VAT exemptions to encourage Taiwanese investors to establish export-oriented and technologically advanced enterprises. Petitioners have not sufficiently established that this VAT exemption program constitutes a countervailable subsidy because our regulations permit exemption or remission of indirect taxes such as the VAT, unless the exemption or remission is excessive in accordance with 19 C.F.R.

351.517(a). Therefore, because petitioners have not shown that there is an excessive exemption, remuneration or rebate of VAT, we do not plan to investigate this program.

E. Provincial/Local Subsidy Programs

1. VAT Refunds and Exemptions for FIEs in Guangdong Province

The petitioners allege that, in Guangdong province, export-oriented FIEs are exempt from import-related VAT on raw materials, parts and components, accessories, packing materials, and other inputs used in production. Encouraged FIEs in Guangdong also receive VAT exemptions on imported equipment. The petitioners provided evidence that certain Chinese producers of kitchen shelving and racks are export-oriented FIEs that are located in Guangdong province. However, petitioners have not sufficiently established that the VAT exemption program for export-oriented FIEs in Guangdong constitutes a countervailable subsidy because our regulations permit exemption or remission of VAT, unless the exemption or remission is excessive, and petitioners have not provided allegation or information regarding excessivity in accordance with 19 C.F.R. 351.517(a). Therefore, we do not plan to investigate this program.

2. Provision of land at less than adequate remuneration in specific regions of Zhejiang Province

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

F. Currency Manipulation

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

Respondent Selection

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

The Department will send the quantity and value questionnaire to those PRC companies identified in the July 31, 2008, petition, at Exhibit 3. The responses must be submitted by those exporters/producers that receive a quantity and value questionnaire no later than September 4, 2008. The Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration's website, at <http://ia.ita.doc.gov/ia-highlights-and-news.html>.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the Government of the PRC. As soon as and to the extent

practicable, we will attempt to provide a copy of the public version of the petition to each exporter named in the petition, consistent with 19 CFR 351.203(c)(2).

ITC Notification

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

Preliminary Determination by the ITC

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

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

David M. Spooner
Assistant Secretary
for Import Administration

Date