

**DEPARTMENT OF COMMERCE****International Trade Administration**

(C-570-942)

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

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

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

**EFFECTIVE DATE:** July 27, 2009.

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:****Petitioner**

Petitioners in this investigation are Nashville Wire Products, Inc., SSW Holding Company, Inc., United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, and the International Association of Machinists and Aerospace Workers, District Lodge 6 (Clinton, IA) (collectively, "Petitioners").

**Period of Investigation**

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

**Case History**

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

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

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

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

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

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

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

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

### Scope of the Investigation

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

- Shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- Baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- Side racks from 6 inches by 8 inches by 0.10 inch to 16 inches by 30 inches by 4 inches; or
- Subframes from 6 inches by 10 inches by 0.10 inch to 28 inches by 34 inches by 6 inches.

The subject merchandise is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.20 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this investigation is shelving in which the support surface is glass.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") statistical reporting numbers 8418.99.80.50, 7321.90.50.00, 7321.90.60.90, 8418.99.80.60, and 8516.90.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### Scope Comments

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

### Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the "Act"), section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to a U.S. industry. On September 24, 2008, the U.S. International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of certain kitchen appliance shelving and racks from the PRC. See *Certain Kitchen Appliance Shelving and Racks From China*, 73 FR 55132 (September 24, 2008); and *Certain Kitchen Appliance Shelving and Racks from China (Preliminary)*, USITC Pub. 4035, Inv. Nos. 701-TA-458 and 731-TA-1154 (Sept. 2008).

### Analysis of Comments Received

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

Decision Memorandum are identical in content.

### Use of Adverse Facts Available

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

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

### Suspension of Liquidation

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

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

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

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

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

**ITC Notification**

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

**Return or Destruction of Proprietary Information**

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

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

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

**APPENDIX**

**List of Comments and Issues in the Decision Memorandum**

**General Issues**

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

**Comment 2** Double Counting/ Overlapping Remedies

**Comment 3** Proposed Cutoff Date for Identifying Subsidies

**Program Specific Issues**

**Comment 4** Certain Wire Rod Suppliers as Authorities

**Comment 5** Wire Rod Provided by Private Suppliers

**Comment 6** Wire Rod Provided by Trading Companies

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

**Comment 8** Benchmarks for Wire Rod

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

**Comment 10** Tying the Wire Rod Subsidy

**Comment 11** Provision of Electricity for LTAR

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