PUBLIC VERSION
BPI is Ranged and/or Deleted

DOC Investigation Nos. A-570-108 and C-570-109 (China)
ITC Investigation Nos. 701-TA-___ and 731-TA-___ (Preliminary)
Total No. of Pages: 410 (Vol. I)
<u>Original Investigation</u>
Business Proprietary Information for which Proprietary Treatment is Requested is Deleted on Vol. I Narrative pp. iii, 4-5, 18, 23-27, 29-30, 34-39, 41, 44, 48-50 and Exhibits I-1-C – F, I-8, I-10 – I-11, I-13, I-15-A – C, I-22 – I-24

BEFORE THE
INTERNATIONAL TRADE ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE
AND THE
U.S. INTERNATIONAL TRADE COMMISSION

PETITION FOR ANTIDUMPING AND COUNTERVAILING DUTIES PURSUANT TO SECTIONS 701 AND 731 OF THE TARIFF ACT OF 1930, AS AMENDED

CERAMIC TILE PRODUCTS FROM THE PEOPLE'S REPUBLIC OF CHINA

PETITIONER:

THE COALITION FOR FAIR TRADE IN CERAMIC TILE

VOLUME I: GENERAL ISSUES AND INJURY

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I. INTRODUCTION

On behalf of the Coalition for Fair Trade in Ceramic Tile ("FTCT", "the Coalition", or "Petitioner"),[1] we hereby file this Petition seeking the imposition of countervailing and antidumping duties on U.S. imports of ceramic tile products (or "ceramic tile")[2] from the People's Republic of China (the "PRC" or "China"), pursuant to Sections 701 and 731 of the Tariff Act of 1930, as amended (the "Tariff Act"), 19 U.S.C. §§ 1671 & 1673. This Petition presents evidence that (i) imports of ceramic tile from China are being sold, and are likely to be sold, in the United States at less than fair value ("LTFV"); (ii) imports of ceramic tile from China are benefitting from countervailable subsidies; and (iii) these unfairly traded imports have caused material injury, and threaten further material injury, to the domestic industry producing ceramic tile.

In recent years, a surge of imports of ceramic tile from China has entered the United States at aggressively low and unfair prices that have undercut the domestic industry's prices. The domestic industry has been forced to cut prices and has lost sales and revenues to these unfair imports, causing a weakening in the domestic industry's financial performance despite a cyclical peak in total demand, and a decline in its market share in the most recent year, 2018. Without antidumping and countervailing duty relief, the domestic industry faces the imminent threat of further material injury as imports from China at high dumping margins continue to grow, particularly because many types of ceramic tile are sold as commodities with competition based primarily on price.

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[1] The Coalition is comprised of eight members each of which is listed in **Exhibit I-1-A**. These companies are all primary Regular Members of the Tile Council of North America ("TCNA"), a trade association representing members of the domestic industry.

[2] The industry uses the term "tile" as both a singular and plural noun. We do the same throughout the Petition.

This Petition contains separate volumes for the allegations of subsidies and dumping for China:

- **Volume I** contains general information as well as information demonstrating material injury and threat of material injury to the domestic industry.

- **Volume II** contains allegations of sales at less than fair value ("LTFV") regarding imports from China.

- **Volume III** contains allegations of countervailable subsidies regarding imports from China.

The Petition sets forth the information reasonably available to Petitioner and is filed in accordance with the requirements of Section 351.202 of the regulations of the U.S. Department of Commerce (the "Department"),[3] and Section 207.11 of the regulations of the U.S. International Trade Commission ("ITC" or the "Commission").[4]

II. GENERAL INFORMATION

A. Petitioner Contact Information (19 C.F.R. § 207.11(a); 19 C.F.R. § 351.202(b)(1))

The Petitioner is the Coalition, which is comprised of eight U.S. ceramic tile producers. The Petitioner is a domestic interested party within the meaning of 19 U.S.C. § 1677(9)(C) and 19 C.F.R. § 351.102(b)(29)(v), as each member of the Coalition is a U.S. producer of the domestic like product. The names, addresses, telephone numbers, websites, and email addresses of the companies comprising the Coalition are provided in **Exhibit I-1-A**.

The Coalition companies are all members of the Tile Council of North America ("TCNA"), an international trade association for ceramic tile producers in North America, which estimates

[3] 19 C.F.R. § 351.202.

[4] 19 C.F.R. § 207.11.

that these eight Coalition companies account for over 90 percent of U.S. ceramic tile production.[5] A complete list of all known U.S. producers with their contact information, as required by 19 C.F.R. § 207.11(b)(2)(ii), is attached at **Exhibit I-1-B**. This list is based on the TCNA ceramic tile producing members or "Regular Members" producing ceramic tile in the United States and other ceramic tile producing companies known to the TCNA, as indicated in the declaration by a TCNA executive.

B. Identity of the Domestic Industry on Whose Behalf the Petition Is Filed (19 C.F.R. §207.11(b)(2)(ii); 19 C.F.R. § 351.202(b)(2))

This Petition is filed on behalf of the Coalition representing the United States ceramic tile industry that produces ceramic tile. To the best of Petitioner's knowledge, the Coalition represents over 90 percent of U.S. ceramic tile production. As discussed in greater detail below, the Department therefore should conclude that this Petition has received the requisite support from producers of the domestic like product pursuant to 19 U.S.C. § 1673a(c)(4).

Exhibit I-1-C contains data showing the volume and value of TCNA members' U.S. shipments of the domestic like product for the years 2016-2018.

C. Information Relating to the Degree of Industry Support for the Petition (19 C.F.R. § 351.202(b)(3))

According to 19 U.S.C. §§ 1671a(c)(4)(A) and 1673a(c)(4)(A), a petition is filed by or on behalf of the domestic industry if: (1) domestic producers who support the petition account for at least 25 percent of the total production of the domestic like product, and (2) domestic producers who support the petition account for more than 50 percent of the production of the domestic like

[5] The Coalition's Counsel undertook a survey, similar to the U.S. International Trade Commission's U.S. Producer Questionnaire, of Coalition members to collect and aggregate their production, trade, and financial data that is analyzed in this Petition. Separately, the TCNA routinely collects trade data and publishes market reports for its members, as described in **Exhibit I-1-D**.

product produced by that portion of the industry expressing support for or opposition to the petition. To the best of its knowledge, the Coalition of the eight U.S. ceramic tile producers collectively listed above meet both of these requirements with respect to the Petition at issue here.

Attached as **Exhibit I-1-D** to this Volume I is a sworn declaration from Eric Astrachan, Executive Director of TCNA, and President of the Coalition, stating that the Coalition represents over 90 percent of the domestic production of ceramic tile in the United States. This sworn statement is supported by a recent publication of ceramic tile U.S. production in 2016 and 2017, which is comparable to U.S. shipments in the same years and the actual production of the Coalition members in 2016-17, as shown in **Exhibit I-1-E**. This, compared with the volume of ceramic tile produced by the Coalition, as shown in the table below,[6] demonstrates that the Coalition accounts for more than 50 percent of domestic production of the specific products at issue in these investigations.[7]

Year		2016	2017	2018	
U.S. Production (in thousands of sq. ft.)	[			816,789	]

Petitioner respectfully submits that U.S. shipments is a reasonable proxy for U.S. production in this case. As indicated in **Exhibit I-1-D**, TCNA is the only trade association for U.S. ceramic tile manufacturers, and TCNA does not collect production data from its members. Furthermore, there is no known publicly available information regarding the volume of ceramic

[6] *See* Survey of the Coalition conducted by Counsel to Petitioner. Data represent aggregated data for [ ] companies.

[7] *See* Declaration of TCNA, attached hereto as **Exhibit I-1-D**. Furthermore, **Exhibit I-1-E** provides U.S. shipments of Coalition members relative to TCNA shipments because TCNA does not collect industry production data.

tile production in the United States in 2018. TCNA does, however, collect U.S. shipment data from its members, which is the closest available proxy for domestic production data. *See* **Exhibits I-1-C & E.** Specifically, in 2018, total U.S. shipments by U.S. producers in the Coalition totaled [ ] in thousands of square feet, which is comparable to the production numbers shown above throughout the period of investigation.[8] This Petition is therefore filed on behalf of the domestic industry within the meaning of 19 U.S.C. §§ 1671a(c)(4)(A) and 1673a(c)(4)(A).

D. Related Proceedings & Previous Requests for Import Relief for the Merchandise (19 C.F.R. § 351.202(2)(4))

Petitioner has not before initiated any proceedings with respect to ceramic tile from China pursuant to Sections 337 or 702 of the Tariff Act,[9] Sections 201 or 301 of the Trade Act of 1974,[10] or Section 232 of the Trade Expansion Act of 1962.[11] However, ceramic tile is subject to Section 301 tariffs, pursuant to an investigation initiated by the Administration.[12] Such tariffs are insufficient to level the playing field; do not rectify the price difference in the dumped and subsidized imports from China; and may, of course, be revoked at any time.

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[8] *See e.g.*, Steel Racks form China Notice of Initiation (July 10, 2018) at 43-54 (relying on Steel Racks from China Petition, at Ex. I-2 to further support the standing using U.S. shipment data the trade association collected). The 2018 U.S. production and U.S. shipments for each producer in the Coalition is provided in **Exhibit I-1-F**.

[9] 19 U.S.C. §§ 1337, 1671a.

[10] 19 U.S.C. §§ 2251, 2411.

[11] 19 U.S.C. § 1862.

[12] *See Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 47974 (Sept. 21, 2018). The rate of duty for Ceramic Tile Products is 10 percent *ad valorem*, which was to increase to 25 percent *ad valorem* on January 1, 2019. On December 1, 2018, President Trump met with Chinese President Xi and they agreed to negotiate IP and technology issues related to Section 301, and suspend the anticipated increase to the tariffs. The increases would be implemented if no agreement was reached in 90 days (by March 2, 2019). *See* Congressional Research Services, *Enforcing U.S. Trade Laws: Section 301 and China* (Jan. 2, 2019) available at https://fas.org/sgp/crs/row/IF10708.pdf (visited on Jan. 14, 2019). This increase has been postponed "until further notice." *See Notice of Modification of Section 301 Action*, 84 Fed. Reg. 7966 (Mar. 5, 2019).

The European Union ("EU") has imposed antidumping duties on imports of ceramic tile from China since March 16, 2011.[13] This antidumping order was renewed in 2017 and is set to expire in 2022, subject to an expiry review.[14]

The EU is hardly alone. South Korea, Mexico, India, and Pakistan all impose antidumping duties on certain ceramic tile imports from China.[15] Saudi Arabia recently filed a trade remedy case against China, India, Pakistan, and Spain. Thus, it is little wonder that China has turned its sights on the U.S. as a prime market in which to dump its ceramic tile. *See* **Exhibit I-2** for additional information regarding other countries' trade remedy orders on Chinese ceramic tile. It is no surprise that in December 2018, U.S. imports of ceramic tile from China, by volume, exceeded the total U.S. domestic shipments of TCNA members for the first time.

E. Description of the Subject Merchandise (19 C.F.R. § 351.202(b)(5))

1. Description and Requested Scope of Investigation

The products covered by this Petition include ceramic tile, regardless of the percent water absorption, including porcelain tile (0.5% or less water absorption), vitreous tile (over 0.5% to 3% water absorption), semi-vitreous tile (over 3% to 7% water absorption), and non-vitreous tile (over 7% water absorption).[16] Subject merchandise includes glazed and unglazed ceramic flooring and wall tile, countertop tile, paving tile, hearth tile, porcelain tile, mosaic cubes, finishing tile, and the like, whether or not the tile is on a backing.

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[13] *See* Council Regulation (EU) No 258/2011 (Mar. 16, 2011), *available at* https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:070:0005:0030:EN:PDF, attached as **Exhibit I-2-A**.

[14] *See* http://trade.ec.europa.eu/tdi/case_history.cfm?init=1654, attached as **Exhibit I-2-A**.

[15] *See* **Exhibit I-2**.

[16] Non-vitreous tile is considered to be very soft-bodied tile. It is also highly porous, which means that it absorbs a lot of water, meaning, as noted in the text above that it will absorb around 7% of its weight in water, or more.

Based on the above description and the following analysis, Petitioner requests that the following language be used to define the products included in the scope of these investigations:

> The merchandise covered by these investigations is ceramic tile. Ceramic tiles are articles containing a mixture of minerals including clay (generally hydrous silicates of alumina or magnesium) that are treated to develop a fired bond. The subject merchandise includes ceramic flooring tile, wall tile, paving tile, hearth tile, porcelain tile, mosaic tile, finishing tile, and the like (hereinafter "ceramic tile"). All ceramic tile is subject to the scope regardless of whether the tile is glazed or unglazed, regardless of size, regardless of the water absorption coefficient by weight, regardless of the extent of vitrification, and regardless of whether or not the tile is on a backing. Ceramic tile is covered by the scope regardless of end use, size, thickness, and weight. For the avoidance of doubt, subject merchandise includes tiles pressed as very large single pieces, up to and exceeding 5' x 15'.
>
> Subject merchandise includes ceramic tile produced in the People's Republic of China (PRC) that undergoes minor processing in a third country prior to importation into the United States. Similarly, subject merchandise includes ceramic tile produced in the PRC that undergoes minor processing after importation into the United States. Such minor processing includes, but is not limited to, one or more of the following: beveling, cutting, trimming, staining, painting, polishing, finishing, or any other processing that would otherwise not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.
>
> The scope excludes ceramic bricks properly classified under HTSUS 6904.10.00.10 through 6904.90.00.00.
>
> Subject merchandise is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under the following subheadings of heading 6907: 6907.21.10.05, 6907.21.10.11, 6907.21.10.51, 6907.21.20.00, 6907.21.30.00, 6907.21.40.00, 6907.21.90.11, 6907.21.90.51, 6907.22.10.05, 6907.22.10.11, 6907.22.10.51, 6907.22.20.00, 6907.22.30.00, 6907.22.40.00, 6907.22.90.11, 6907.22.90.51, 6907.23.10.05, 6907.23.10.11, 6907.23.10.51, 6907.23.20.00, 6907.23.30.00, 6907.23.40.00, 6907.23.90.11, 6907.23.90.51, 6907.30.10.05, 6907.30.10.11, 6907.30.10.51, 6907.30.20.00, 6907.30.30.00, 6907.30.40.00, 6907.30.90.11, 6907.30.90.51, 6907.40.10.05, 6907.40.10.11, 6907.40.10.51, 6907.40.20.00, 6907.40.30.00, 6907.40.40.00, 6907.40.90.11, and 6907.40.90.51. Subject merchandise may also enter under subheadings of headings 6914 and 6905: 6914.10.80.00, 6914.90.80.00, 6905.10.00.00, and 6905.90.00.50. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of these investigations is dispositive.

A "ceramic article" is defined by ASTM C1232, Standard Terminology for Masonry, as pertaining to products containing hydrous silicates of alumina {or other metals} that are treated to develop a fired bond.[17]

Merriam-Webster's Dictionary defines ceramic as "of or relating to the manufacture of any product (such as earthenware, porcelain, or brick) made essentially from a nonmetallic mineral (such as clay) by firing at a high temperature; also: of or relating to such a product."

The American National Standard Specifications for Ceramic Tile is ANSI A137.1.[18] The International Organization for Standardization (ISO) standard for ceramic tiles is ISO 13006.[19] The ANSI specification for Gauged Porcelain Tiles and Gauged Porcelain Tile Panels/Slabs is ANSI 137.3.[20] Gauged porcelain tile panels/slabs are large ceramic tiles and are included in the scope of subject merchandise.

The industry commonly utilizes the terms "paving tiles" or "pavers" to connote tile that is used for a flooring application or on a walking surface, and utilizes the term "finishing tile" to indicate units of various shapes consisting of such items as bases, caps, corners, moldings, angles, etc., necessary to achieve an installation of the desired sanitary and/or architectural design. *See* ANSI 137.1 – 2017, included in **Exhibit I-23**.

It is worth noting that the nomenclature for HTSUS heading 6907, which encompasses subject merchandise, refers to ceramic "flags" and that the above-requested scope does not include a reference to "flags." It is not the intention of Petitioner, with this omission, to exclude ceramic

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[17] *See* **Exhibit I-23-C**.

[18] *See* **Exhibit I-23-A**.

[19] *Id.* at **Exhibit I-23-D**.

[20] *Id.* at **Exhibit I-23-B**.

"flags" from the scope. Rather, it is the understanding of Petitioner that ceramic "flags" are synonymous with flooring and paving tile, both of which, of course, are explicitly covered by the scope. The term ceramic "flags" is long obsolete in the industry, and Petitioner simply refrained from using an obsolete term in the scope, even if the term is still utilized in the HTSUS.

2. Tariff Classification

Subject products include ceramic floor and wall tile, and finishing and mosaic tile, classifiable under HTSUS Heading 6907, or more specifically HTSUS Subheadings 6907.21.10 through 6907.40.90. *See* **Exhibit I-3-A**. Subject products may also be classified under HTSUS Headings 6905 and 6914, or more specifically HTSUS subheadings 6905.10.00.00, 6905.90.00.50, 6914.10.80.00, and 6914.90.80.00. Subheadings 6907.21, 6907.22, and 6907.23 classify tile according to the tile's water absorption capability, with "porcelain" tile, the type of ceramic tile most resistant to the absorption of water, classified under 6907.21. Subheading 6907.30 is mosaic ceramic tile primarily, but may also include other ceramic tile. Subheading 6907.40 is finishing ceramic tile.

The HTSUS headings for ceramic tile included both Heading 6907 (unglazed) and Heading 6908 (glazed). While this does not affect the requested scope of the investigation, it is important to consider when analyzing historical import data, as further discussed *infra* in Section III.D.1. *See* **Exhibit I-3-A**. **Exhibit I-3-B** provides a concordance that reflects the Petitioner's understanding of the old and new HTSUS categories related to ceramic tile.

3. Technical Characteristics and Uses

Ceramic tile are often flat, with beveled edges, but may be in any and all shapes, sizes, and colors. Ceramic tile are durable and hard wearing, making them suitable for covering surfaces such as floors, walls, countertops, table tops, other furniture, bathroom showers, and other areas and objects. Ceramic tile are frequently used in the construction industry for building interior and exterior floors, footpaths, swimming pools, walls, partitions, and other objects. Ceramic tile has a myriad of end uses, including covering walls, floors, counter- and table-tops, other furniture, and are most commonly used residentially in kitchens, bathrooms, and entrances and commercially in myriad floor and wall applications.

Two sample ceramic tiles are provided in **Exhibit I-4-A-B**, which outline the product information and uses.

4. Production Process

The manufacturing process for ceramic tile can be organized into several basic steps of processing the raw materials to obtain the finished product. For all ceramic tile, the basic production steps include: (i) clay and minerals as raw materials, (ii) mixing and milling, (iii) spray drying, (iv) shaping the material into tile form, (v) drying, (vi) glazing for glazed products or digital printing, (vii) firing, and (viii) post-firing operations. All ceramic tile are produced using the same production equipment, notwithstanding technological variations, for each step that is described generally below.

- *Clay and Minerals as Raw Materials* – The raw materials making up a ceramic tile determine its properties. While clay in some amount is common to all ceramic tile, the amount and type of clay can vary. For example, the color of the body of the ceramic tile is determined in part by the amount of the iron-containing raw materials, with iron-containing clays producing a red body and the absence of iron-containing clays producing a whitish body. Other minerals may also be added to impart specific properties, depending on the type of tile, forming process, and firing process. Feldspar for example is commonly added in the manufacture of porcelain tile. Raw materials are crushed into powder before mixing and milling operations.

- *Mixing and Milling* – The raw materials are mixed to obtain the specific properties desired and depending on the forming process, the raw materials may be mixed as dry ingredients or wet ingredients. Most commonly, they are mixed wet in large mills that further reduce the particle size in preparation for spray-drying. However, wet mixing can also be done for extrusion forming, wet-pressing, and slip-casting, and dry grinding can be done where the following forming operation does not use spray-dried particles.

- *Spray Drying* – To obtain consistent particles allowing for a high degree of quality control, the wet-milled mixture (commonly called a slurry) is sprayed into a tower with rising warm air. This process can be well-controlled to result in a generally homogenous powder with just enough moisture for subsequent pressing.

- *Shaping the Material into the Tile Form* – Tiles can be formed through a variety of techniques, based on whether the material being formed is in a wet or dry state. Most common is dry-pressing[21] of particles with the powder squeezed in either a dye, or between rollers, belts, or other means to compress the powder. In some instances various powders are combined to create surface effects when pressed together. Wet clay can be formed by continuously extruding it and cutting to size, or by pressing it into a dye, or by pouring it into a mold. Tiles can currently be formed as large as 5' x 15'[22] and larger or smaller than 1" x 1". Thicknesses can exceed 3 cm or be as thin as 2 mm, with some tiles even outside these dimensions.

- *Drying Reduces Moisture in the Tiles* – After being formed, the newly-formed tiles, commonly called "green" tiles, are commonly allowed to dry, depending on their thickness and moisture content, usually in large dryers or low-temperature kilns. These dryers can be continuous or batch operations commonly using gas, oil, or coal energy, although in some cases infrared, microwave, or excess heat from other operations will be used.

- *Glazing and/or Digital Printing* – The surface of the green tile can be decorated before firing through a surface application of materials that bond to the surface when fired. A variety of techniques exist for applying such materials from a simple waterfall coating the surface, to spray applications, and now commonly with materials being digitally applied.[23] Surface decoration can also be achieved at the time of forming by adding dry powders before forming that impart decorative effects to the surface upon firing. Surface decoration can also be done on a fired tile before a secondary firing operation.

- *Firing* – The time and temperature for firing the green tiles depends on the raw material makeup of the tiles and the desired finished properties. How the tiles are heated and cooled[24] is controlled to allow various physical changes to take place. In the case of porcelain tiles, firing is sufficiently hot (typically, but not exclusively, between 2100°F to 2200°F) to drive the finished porosity to 0.5% and below. Firing can be done in one

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[21] The powder is not actually fully dry, but rather has just enough moisture to hold together after pressing.

[22] These tiles, which are also called slabs or panels, are sometimes imported under HTSUS 6914.10.80.00 or 6914.90.80.00.

[23] The first two applications refer to "glaze" being applied while the latter refers to "ink-jet printing" using glaze-like compounds.

[24] Commonly called a firing curve.

operation with the green tile and surface decoration fired together (commonly called single-fired or monocottura and using a roller hearth kiln) or in two or more operations depending on the processes used before firing and the decoration effects desired. Depending on the firing process and raw materials used, the total time for firing and cooling can be under an hour or up to multiple days. Various fuels can be used for firing depending on local supply, environmental concerns, and economics but regardless of fuel or firing process, the conversion from a clay containing mixture to a ceramic material through firing creates the desirable properties associated with ceramic tile.[25]

- *Post-firing Operations* – After firing, various post-firing operations may be employed. Polished tiles, for example, will go to a polishing line using abrasives to create a fine polish on the surface. Rectified tiles will go to a cutting line to produce precisely sized tiles. Cutting operations may be at the factory or offsite at another facility to produce a range of modular products. This is especially true for very large tiles (commonly called slabs or panels and produced in sizes up to 5' x 15' (or larger))[26] which may be cut at the factory but are also commonly shipped as produced in large sizes and cut in a separate facility or even on the job site.

5. Channels of Distribution

Ceramic tile are sold to a variety of end users, including the single-family home and remodeling market, bath and kitchen stores and design centers, and the commercial construction industry. Ceramic tile is sold to commercial contractors and directly to commercial end users through several channels of distribution, including (a) Home Centers (e.g., Home Depot, Lowes), (b) regional distributors and floor covering wholesalers, and (c) other types of retailers, such as manufacturer stores, importer stores, and kitchen, bath, and flooring stores.

6. The Domestic Like Product Is Coterminous with the Scope

The Tariff Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[27] The

[25] While the crystallinity of the clay containing mixture changes through the firing process, crystallinity itself is not a determinant of whether a material is ceramic.

[26] These tiles, which are also called slabs or panels, are sometimes imported under HTSUS 6914.10.80.00 or 6914.90.80.00.

[27] 19 U.S.C. § 1677(10).

determination of the appropriate domestic like product(s) in an investigation is a factual one, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[28] The Commission generally considers a number of factors when defining the domestic like product, including:

- physical characteristics and uses;
- interchangeability;
- channels of distribution;
- customer and producer perceptions;
- the use of common manufacturing facilities and production employees; and
- price.[29]

The Commission looks for clear dividing lines among possible like products and disregards minor variations.[30]

The scope of this case covers ceramic tile. Here, the record supports a finding of a single domestic like product that is co-extensive with the scope of these investigations.

Ceramic tile produced in China is interchangeable with the products the Coalition produces in the United States.[31] The following analysis addresses each of the factors that the Commission

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[28] *Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand*, Inv. Nos. 701-TA-393 and 731-TA-829-30, 833-34, 836, 838, USITC Pub. No. 3283 (Mar. 2000) at 3, *citing NEC Corp. v. Dep't of Commerce*, 36 F. Supp. 2d 380 (Ct. Int'l Trade 1998); *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995).

[29] *Certain Cold-Rolled Steel Products*, *supra* at 3 n.6. No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation. *Id.* at 3, *citing* S. Rep. No. 96-249 at 90-91 (1979).

[30] *Id.*, citing *Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd* 938 F. 2d 1278 (Fed. Cir. 1991).

[31] *See* Commission Regulation (EU) No. 258/2011 (Mar. 16, 2011), at L 70/8, available at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:070:0005:0030:EN:PDF, attached as **Exhibit I-2-A.** ("It is concluded that the product concerned, the product produced and sold on the domestic market of China and on the domestic market of the USA, which served provisionally as the analogue country, as well as the product manufactured and sold in the Union by the Union producers were found to have the same basic physical and technical characteristics as well as the same basic uses. They are therefore provisionally considered as alike within the meaning of Article 1(4) of the basic Regulation.").

considers in defining a domestic like product and establishes that all domestic and imported ceramic tile constitute the same like product.

Physical characteristics and uses. Ceramic tile from China has the same physical characteristics and uses as ceramic tile produced in the United States. Specifically, all ceramic tile is made from a mixture of the same inputs of primarily clay, minerals, silica, feldspar, and other raw materials. Moreover, all such products are used in applications such as for floors, walls, entry ways, fireplace hearth surfaces, countertops, showers, bathrooms, and kitchens.

Interchangeability. As a general rule, both domestically produced and imported ceramic tile must meet customer specifications. Thus, imported and domestic ceramic tile are typically comparable in quality and consumers use them interchangeably in the applications where ceramic tile are consumed. Minor variations among various producers have not influenced price or customer preference.

Channels of distribution. Ceramic tile is sold to the same customers (end-users and distributors) through the same channels of distribution, whether domestic or imported.

Customer and producer perceptions. Because many types of ceramic tile are typically commodity products, sold without reference to brand, customers and producers perceive domestic and imported ceramic tile to be the same. Some more informed customers may have a preference for Italian tile, which are commonly perceived as the industry premium standard, but most customers rarely know the country of origin of the box of ceramic tile that are installed by installers.

Common manufacturing facilities and production employees. It is estimated that the Coalition represents over 90 percent of U.S. ceramic tile production. They generally use the same production process (as described above in Sec. II.D.4), the same production equipment, and the same type of production employees. While minor variations in the production process may occur, these variations do not change the fundamental properties or uses of the product. All ceramic tile are produced in common manufacturing facilities using the same equipment and production employees for the common production processes.

Price. As previously stated, many types of ceramic tile are commodity products, sold without reference to brand, once a design is selected. Ceramic tile competes primarily on the basis of price for comparable designs. While prices can vary somewhat depending on size, thickness, design, and other factors, these variations do not change the properties or uses of the product, and these characteristics do not constitute evidence of different domestic like products.

Based on the foregoing, the domestic like product in these investigations should be defined as ceramic tile, co-extensive with the scope of the investigation.

7. There is a Single Domestic Industry

Section 771(4)(A) of the Tariff Act defines the term "industry" as "the producers as a {w}hole 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."[32] As demonstrated in Section II.C *infra*, the Coalition accounts for more than 90 percent of U.S. production of ceramic tile.

F. <u>Country of Production and Any Intermediary Country Through Which the Merchandise Is Transshipped (19 C.F.R. § 351.202(b)(6))</u>

Ceramic tile that are the subject of this Petition are produced in and exported from China. Petitioner notes that official U.S. import data show ceramic tile imports allegedly from Hong

[32] 19 U.S.C. § 1677(4)(A).

Kong.[33] Petitioner is unaware of any significant production of subject merchandise in Hong Kong, and so recommends that such imports from Hong Kong should be considered to be subject merchandise for purposes of the Commission's preliminary inquiry. Petitioner notes that subject merchandise also includes ceramic tile further processed in a third country, including but not limited to one or more of the following: cutting, trimming, painting, staining, polishing, finishing, assembly, or any other processing (*e.g.*, cutting slab or larger ceramic tile into smaller tile sizes) that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

G. Producers and Exporters of the Subject Merchandise (19 C.F.R. § 351.202(b)(7)(i)(A))

The names and addresses of known Chinese producers and exporters of ceramic tile are provided in **Exhibit I-5**.

H. Information for Antidumping and Countervailing Duty Calculations (19 C.F.R. § 351.202(b)(7)(i)(B))

The necessary information concerning the calculation of the export price for the subject merchandise is provided in Volume II. Because China has been found to be a non-market economy country, the information necessary for a calculation of normal value pursuant to 19 C.F.R. §351.408 is also provided in Volume II. The necessary information concerning countervailable subsidies is provided in Volume III.

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[33] Specifically, U.S. Census Bureau data show that imports of ceramic tile from Hong Kong were 3.2 million square feet in 2016, 4.6 million square feet in 2017, and 3.9 million square feet in 2018.

I. Volume and Value of Imports (19 C.F.R. § 351.202(b)(8))

Exhibit I-6 contains data showing the volume, value, and average unit values of U.S. imports of ceramic tile from China for 2016-2018 on an annual basis. These data are taken directly from the U.S. Census Bureau official import statistics.

J. Names and Addresses of Importers (19 C.F.R. §§ 207.11(b)(2)(iii) & 351.202(b)(9))

The names and addresses of known importers of ceramic tile are provided in **Exhibit I-7**. These data represent the best information reasonably available. Petitioner believes that there may be a number of importers of ceramic tile from China that are unknown to Petitioner at this time. Accordingly, Petitioner respectfully requests that the Department and the Commission obtain this information from U.S. Customs and Border Protection.

III. THE DOMESTIC INDUSTRY IS BEING MATERIALLY INJURED AND THREATENED BY REASON OF DUMPED AND SUBSIDIZED IMPORTS OF CERAMIC TILE FROM CHINA

A. Introduction

The record in this case demonstrates that U.S. imports of ceramic tile from China (also referred to herein as "subject imports") have caused material injury to the domestic industry and that such imports threaten additional material injury in the absence of relief. Ceramic tile have an aesthetic appeal to decorate home bathrooms, kitchens, and more, and offer advantages in terms of hardness, strength, resistance to scratching, and resistance to water and staining. The period of investigation ("POI"), 2016-2018, witnessed steady cyclical increases in demand. U.S. producers of ceramic tile should have been able to take advantage of these market conditions to increase their shipments and prices throughout the period at levels consistent with the growth in demand, and to increase their profitability. However, as discussed in greater detail below, a flood of dumped and subsidized imports from China prevented this from happening.

The quantity of U.S. imports of ceramic tile from all sources increased by 10.5 percent between 2016 and 2018. The growth in subject import quantities was even more significant, as subject imports grew by 18.6 percent between 2016 and 2018. To give some historical context for the significant growth in subject imports, imports of ceramic tile from China were less than 300 million square feet in 2009, but by 2018, subject imports had grown to nearly 700 million square feet.[34] These low-priced imports captured market share away from domestic ceramic tile producers, as evidenced by the fact that, while annual subject imports increased nearly 19 percent from 2016 to 2018, the domestic shipments by TCNA members of U.S. produced ceramic tile [ ] percent.[35] The gain in market share by subject imports came at the direct expense of domestic producers.

Subject imports have had a significant adverse impact on the domestic industry. Instead of experiencing increases in its operating income and net income over the period of investigation consistent with the growth in demand for its products and [ ], the domestic industry witnessed declines. These facts plainly show that subject imports have caused material injury to the domestic industry making ceramic tile.

Finally, there is tremendous record of evidence showing that subject imports threaten even more harm in the absence of trade relief, including the massive production capacity by numerous Chinese producers that are export-oriented, numerous export-oriented subsidy programs, and

[34] Import data from U.S. Census Bureau official import statistics for HTS Headings 6907 and 6908.

[35] *See* Exhibit I-8. *See also*, Exhibit I-24 for TCNA's domestic shipment data.

continued increasing, substantial volume of Chinese imports with significant negative price effects.

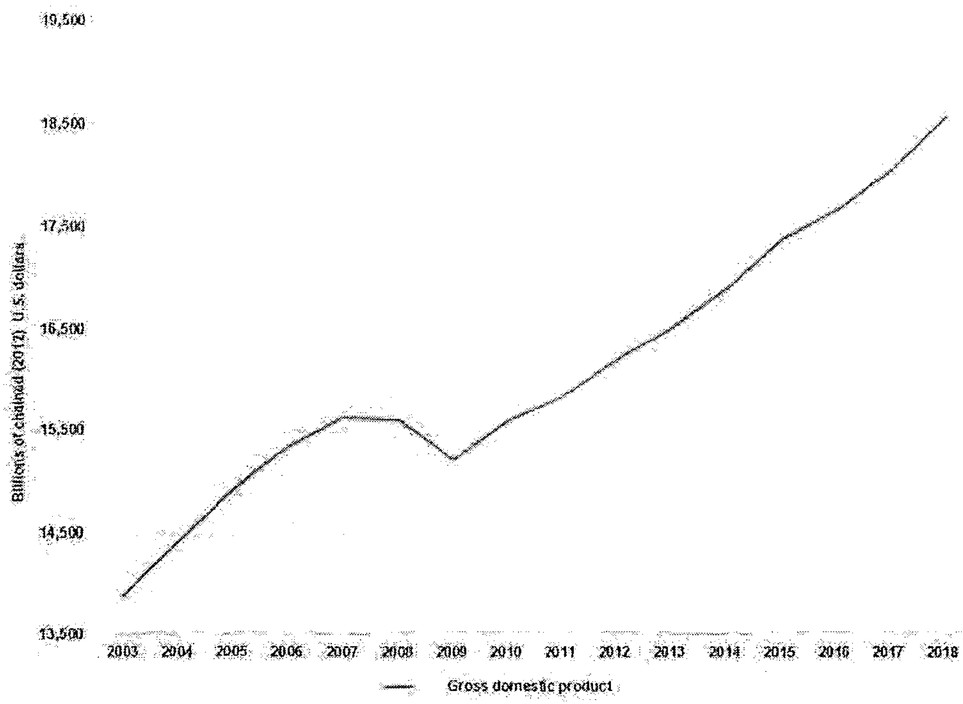
B. Conditions of Competition in the Ceramic Tile Industry

1. Demand for Ceramic Tile is Strong and Growing

Humankind has been producing ceramic tiles for all of recorded history. It is a mature industry in the extreme. In contemporary times, the demand for ceramic tile is driven by several broader economic indicators, including U.S. GDP growth, activity in home improvement, and housing construction/sales, among other factors.

U.S. GDP has been strong and growing, as displayed below:

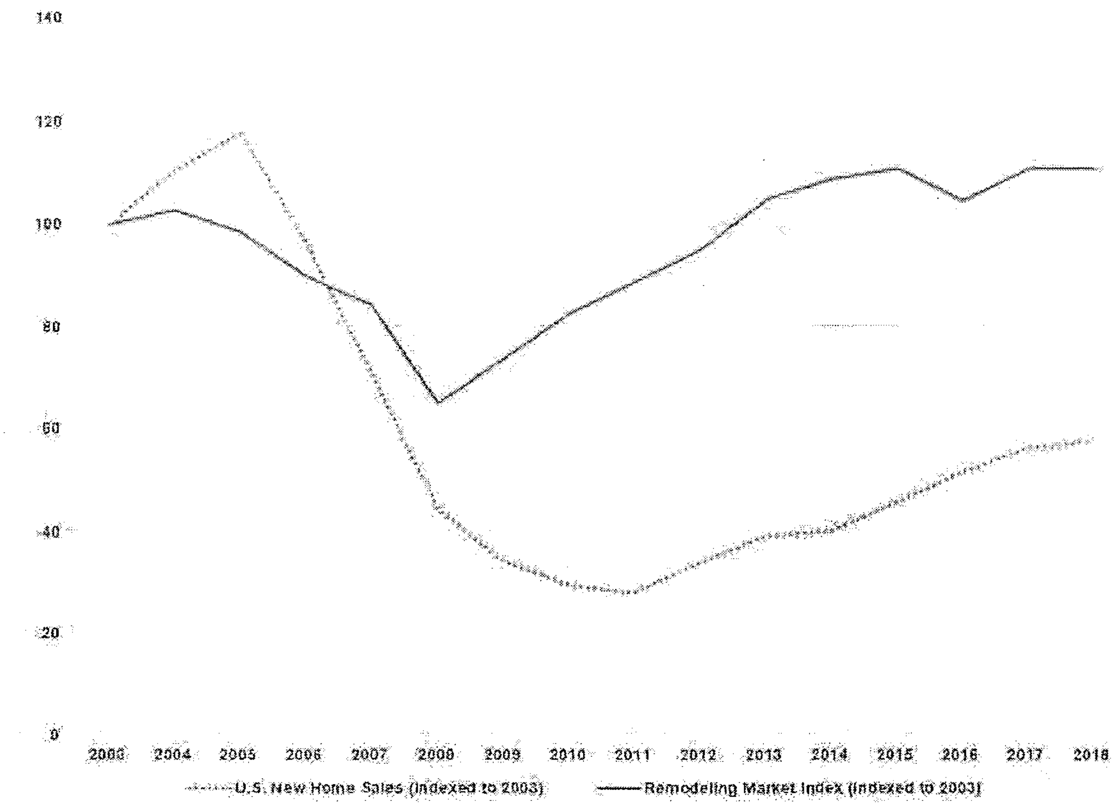
U.S. GDP is Strong and Increasing Following Post – 2008 Decline [36]



As displayed below, indicators for new home sales and remodeling activity are also strong in recent years. The residential construction industry, both new homes and the remodeling of existing homes, serves as one of the primary drivers of apparent consumption of ceramic tile in the United States.

[36] *See* Bureau of Economic Analysis. Data are in billions of chained (2012) U.S. dollars, available at https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=2#reqid=19&step=2&isuri=1&1921=survey (last visited on March 14, 2019), attached as **Exhibit I-26**.

Housing Sales, Remodeling Activity on Upswing Following Post – 2008 Decline[37]



2. Channels of Distribution

Apart from certain artisanal and other specialty products, many ceramic tiles are produced and sold in bulk and trade without reference to brand and as "commodity products." Domestic producers sell their products through several channels of distribution, including (a) home centers (*e.g.*, Home Depot, Lowes), (b) regional distributors and floor covering wholesalers, and (c) other types of retailers, such as manufacturer stores, importer stores, and kitchen, bath, and flooring stores. Subject imports are active throughout the nation and domestic producers compete with

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[37] *See* U.S. Census Bureau New Home Sales; National Association of Home Builders Remodeling Market Index (RMI).

imports in all distribution channels. The home center channel has become more significant in the last few years. This is an important development because price is a very key factor of competition in this channel. Competition among all suppliers is intense, especially as the volume of each sale increases, largely because importers tend to buy in larger lots in order to negotiate further savings and to save on overhead and transportation expenses. The result is that any increase in supply can severely depress or suppress all producers' selling prices.

C. Subject Imports are Causing Material Injury to the Domestic Ceramic Tile Industry

In determining whether a domestic industry is experiencing present material injury caused by unfairly-traded imports, the Commission is required by law to 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 . . . .[38]

As demonstrated below, the evidence supporting these factors shows that the domestic ceramic tile industry is suffering material injury by reason of the subject imports.

1. The Volume of Subject Imports[39] Is Significant Both In Absolute and Relative Terms

In evaluating the volume of subject imports, the Commission must "consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or

[38] 19 C.F.R. § 1677(7)(B).

[39] Subject imports from China far exceed the negligibility threshold of section 771(24)(A)(i)(I) of the Tariff Act of 1930, as amended. Exhibit I-9 establishes that U.S. imports of ceramic tile from China are not negligible. Specifically, U.S. imports from China were 31 percent of total imports in the February 2018 through January 2019

relative to production or consumption in the United States, is significant."[40] In these investigations, available data show that the volume of subject imports is significant within the meaning of the Act.

The Commission typically measures subject imports' significance by reference to their absolute volume, rate of growth, and share of apparent consumption, among other factors. In this case subject imports are significant. **Exhibit I-8** contains the relevant data, based on the official import statistics of the U.S. Census Bureau[41] and the U.S. shipments data of the TCNA.[42]

The data show that the absolute volume of subject imports rose from 583 million square feet ("SF") in 2016 to 692 million SF in 2018, an increase of 19 percent.

In terms of U.S. market share, subject imports' share of apparent U.S. consumption [ ] during the POI, from [ ] percent in 2016 to [ ] percent in 2018.[43]

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period.

[40] 19 U.S.C. § 1677(7)(C)(i).

[41] Petitioner relies upon the Census Bureau import data for purposes of determining apparent consumption, market shares, and average unit value of imports because there are no other data available. It is noted, however, that the revised 2017 HTS added many more 10-digit classifications and that more than three-quarters of U.S. imports of ceramic tile from China in 2018 entered the U.S. under "Other, Other" categories for glazed products (specifically, the 10-digit HTS codes ending in .9051). This indicates that there may be some confusion as to proper classification, and this may be exacerbated because these "Other, Other" categories carry a lower rate of duty than most other categories. In any event, apart from the public import data serving as one measure of subject and non-subject imports in the aggregate, they are of little utility for the Commission's inquiries in both the preliminary and any final phase injury investigations in this case. Essential details, such as the distribution of imports by channel and by certain product types and class are not tracked by the HTS codes. Petitioner strongly urges the Commission instead to rely primarily on its own questionnaire surveys of importers in evaluating both the actual and threatened impact of subject imports on the domestic industry producing the like product in this case. The Commission also must consider the impact of imports from Hong Kong as subject imports.

[42] For this purpose, subject imports transshipped through Hong Kong are not included.

[43] In the course of the Commission's preliminary investigation in this case certain domestic producers will be reporting in their Importers' Questionnaires imports of [ ]. The Commission will find that the volume of U.S. producers' "own" subject imports is [ ]. As the Commission will see, U.S. producers' imports of non-subject imports tend to be in [ ]. The mixture of subject imports from China is [

2. The Volume Impact of Subject Imports has Been Substantial

In recent years, aggregate U.S. apparent consumption of ceramic tiles has trended upward, on the strength of the economy and commercial and residential housing/renovation activity. Under normal circumstances domestic producers' volume, selling prices, and overall condition would be expected to be sharply increasing in this environment. To the contrary, the industry's recent operating results have been weakening. The domestic industry has been import-sensitive for some time. According to TCNA data, in the first year of the POI total import penetration stood at [ ] percent and subject import penetration stood at [ ] percent. Since 2016 and extending through 2018, subject import penetration rose by [ ] percentage points. Importantly, the domestic industry's market share declined by [ ] between 2016 and 2018. Meanwhile, the market share of non-subject imports [ ] between the beginning and the end of the POI (even after the imposition of Sec. 301 tariffs); accordingly, [ ] of the domestic industry's decline in market share is attributable to subject imports. *See* **Exhibit I-8**.

Had the domestic industry's market share in 2016 simply stood still, its volume of shipments in 2018 would have been roughly [ ] higher than what the industry actually experienced,[44] with all other injury indicia improving as well. Unfortunately, that did not happen. As shown below, the domestic industry's market share [ ] from 2016 to 2018, while subject imports' market share [ ].

]. Full details will be provided during the course of the Commission's preliminary investigation.

[44] This is a significant amount, as evidenced by the fact that [ ] is greater than the 2018 U.S. shipments volume achieved by [ ] companies in the Coalition.

<u>Subject Imports Have Captured Market Share from Domestic Shipments Over the POI[45]</u>

[

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In the final analysis the Commission must recognize that consumption of ceramic tile is cyclical in nature, owing to its end-uses in the housing/construction sector. The Commission therefore must consider the condition of this industry in the context of the relevant business cycle. The following chart illustrates that the trend in domestic ceramic tile shipments has generally been consistent with the trends in new home sales and the remodeling index. However, these data also demonstrate the impact of subject imports in 2018 because, while the new home sales index

[45] *See* TCNA Domestic Shipment Data; U.S. Census Bureau import statistics.

improved as compared to 2017 and the remodeling index was flat as compared to 2017, domestic shipments [ ] as compared to 2017.

Domestic Shipments Trend is Consistent with New Home Sales and Remodeling Index[46]

[

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The behavior of all other volume-related indicia such as capacity, capacity utilization, production, U.S. shipments (*see* **Exhibit I-10**) and employment data (*see* **Exhibit I-11**) must be assessed in the context of an upswing in the business cycle.[47] Despite increased aggregate demand

[46] *See* TCNA Domestic Shipment Data; U.S. Census Bureau New Home Sales; National Association of Home Builders Remodeling Market Index (RMI).

[47] The data in **Exhibits I-10 and I-11** are taken from the survey of the Coalition by Counsel to Petitioner.

for ceramic tile (*see* **Exhibit I-8**), the domestic industry's volume-related indicators for production, capacity utilization, U.S. shipments, and employment underperformed. Over the full POI, U.S. production and shipments were [ ], an outcome that is [ ] with the increase in overall demand during this period, and moreover, the domestic industry's indicators actually [ ] in 2018 as compared to 2017. Namely, capacity utilization [ ] in 2018 by nearly [ ] percentage points, domestic production [ ] by [ ] percent, and U.S. shipments [ ] by [ ] percent in 2018. Furthermore, the number of production and related workers, the hours worked by production and related workers, and the wages paid to production and related workers [ ] in 2018 as compared to 2017.

The most recent quarterly data on the domestic shipments by TCNA members show that, beginning in the fourth quarter of 2017, U.S. producers' shipments have [ ]. *See* **Exhibit I-22**. This is a very troubling development, particularly as compared to earlier in the POI, and demonstrates that the injury to the domestic industry has become more acute. This development also indicates that the industry is highly susceptible to further injury by subject imports.

There are signs that the upswing in the business cycle may be softening, and this would have a profoundly negative impact on the domestic industry. For example, the press release accompanying the January 17, 2019 Leading Indicator of Remodeling Activity ("LIRA") states that "{a}nnual growth in the national market for home improvement and repair is expected to slow considerably by the end of the year.... 'Continued slowdowns in homebuilding, sales of building materials, and remodeling permits all point to a more challenging environment for home remodeling in 2019."[48] In general, the domestic industry's reported indicia showed considerable weakness in 2018, and a further softening would exacerbate an already precarious situation for the domestic industry.

3. Subject Imports Have Suppressed and Depressed Domestic Selling Prices

As part of its analysis of price effects, the Commission must also consider whether subject imports have "otherwise depress{ed} prices to a significant degree or prevent{ed} price increases, which otherwise would have occurred, to a significant degree."[49] In this case, there is no question that the steadily growing and significant Chinese share of the market has had a severe negative effect on domestic prices of ceramic tile.

The average unit values of subject imports, based on Census Bureau data, were essentially flat over the POI. Specifically, subject import AUVs were as follows: $0.89 in 2016, $0.90 in 2017, and $0.90 in 2018.[50] As noted, the aggregate U.S. import data cover a wide variety of ceramic tile and thus the overall AUVs mask pricing patterns that will be revealed in the pricing data that the Commission will collect as part of its inquires. Based on its experience in the marketplace, Petitioner expects that the Commission's pricing data will reveal significant and pervasive underselling by subject imports.

As discussed earlier, for the purposes of this Petition, Counsel to Petitioner conducted a survey of the eight members of the Coalition, which account for the vast majority of U.S. production, estimated at over 90 percent of total domestic production. That survey measured

[48] *See* www.jchs.harvard.edu/press-releases/expected-gains-remodeling-spending-slide-lower-2019. The LIRA is prepared by the Joint Center for Housing Studies at Harvard University, attached as **Exhibit I-12**.

[49] 19 U.S.C. § 1677(7)(C)(ii).

[50] U.S. imports are valued on a landed, duty-paid basis. *See* **Exhibit I-6**.

average unit values broadly for the ceramic tile industry. Average unit values for domestic shipments as compared to the average unit values of export shipments are displayed below.

Disparity between Commercial Shipment and Export Shipment AUVs Reveals Downward Pricing Pressure in U.S. Market[51]

Item		Calendar years			
		2016	2017	2018	
U.S. Commercial Shipments	[			$ 1.28	]
Export Shipments by U.S. Producers	[			$ 1.53	]

Note that, despite increasing demand conditions in the United States, domestic selling prices [ ] over the POI. However, U.S. produced export prices were [ ] over the POI. Conversely, U.S. domestic prices are [ ] by comparison due to a race to the bottom between U.S. Producers and subject imports. As one producer stated in its response to the Coalition survey: [ ][52] In addition, it is common for sales to be conducted on a spot basis, and some contract sales contain "meet or release" provisions, which means the domestic industry is constantly subjected to downward pricing pressures by imports of ceramic tile from China.

Additional responses to the Coalition survey reinforce the effects of the low-priced subject imports on domestic producers. For example:[53]

[51] *See* Survey of the Coalition conducted by Counsel to Petitioner.

[52] *See* Survey of the Coalition conducted by Counsel to Petitioner.

[53] *See* Survey of the Coalition conducted by Counsel to Petitioner.

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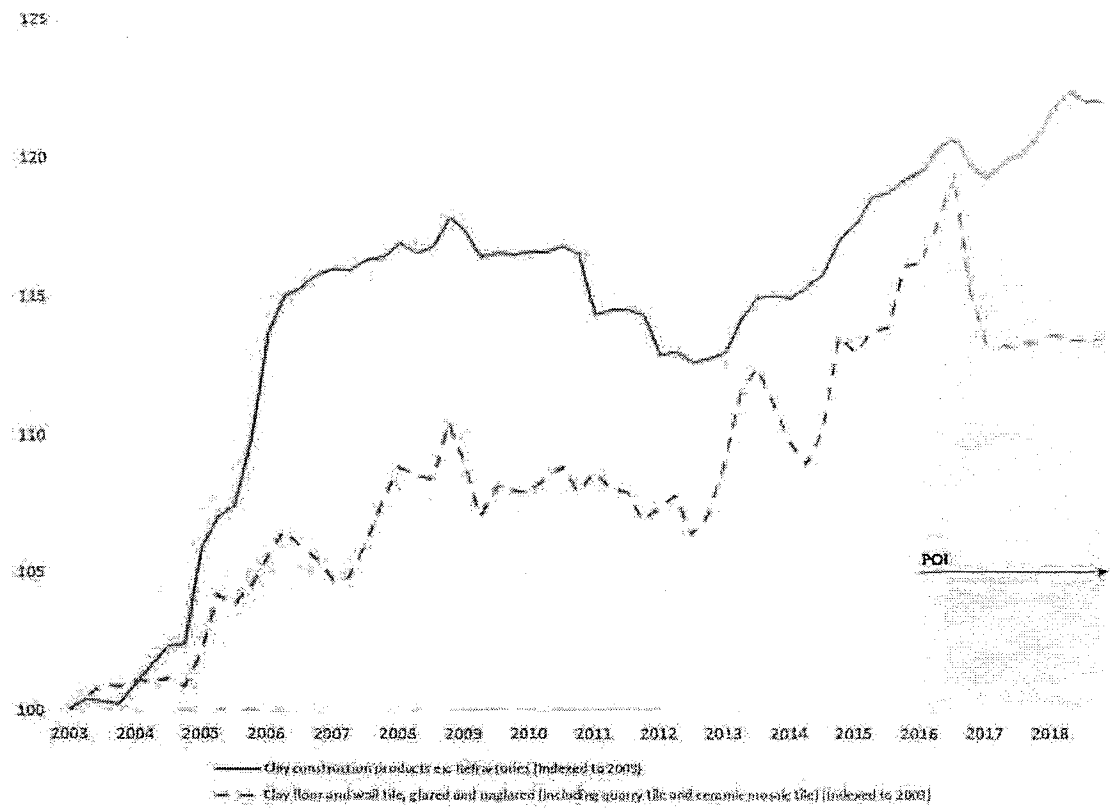
Importantly, these [ ] domestic prices for ceramic tile are in stark contrast to the prices seen in a broader array of clay products. This is evidenced by a comparison of the relevant Producer Price Indices, which reveals a recent price divergence between the domestic pricing of ceramic tile and the pricing of clay building materials more generally. This divergence is displayed in the chart below. The most significant drop in producer prices for ceramic tile occurs between 2016 and 2017, at a time when subject imports increased by 13 percent and subject imports' market share [ ] during the POI.

<u>Producer Price Index of Ceramic Tile vs. All Clay Construction Products Reveals Widening Price Divergence during POI</u> [54]



Domestic producers lost sales and revenues to subject imports during the POI. **<u>Exhibit I-13</u>** summarizes multiple examples, but given the difficulty of many producers in tracking this kind of information, particularly for those U.S. producers that sell solely or largely through distributors, these examples provide only a small window into the pervasive lost revenues and lost sales that have occurred due to price-based competition with subject imports. Moreover, domestic

[54] *See* Bureau of Labor Statistics PPI Data, PPI Commodity data for Nonmetallic mineral products-Clay construction products ex. refractories, not seasonally adjusted (Series ID WPU134) (adjusted for base year 2003), and PPI Commodity data for clay floor and wall tile, glazed and unglazed (Series ID WPU13440131) (adjusted for base year 2003). Note that this data series consists of quarterly data points and that quarterly indexes represent an average of monthly indexes.

producers report that, due to the low prices of subject imports, they are sometimes passed over and not even given an opportunity to provide a bid. Such instances cannot be captured in the lost sales and lost revenues information filed with the Commission. Price depression has occurred when domestic producers have had to lower their prices in order to match the Chinese price, and price suppression has occurred when domestic producers have been unable to raise their prices, even though aggregate demand increased during the POI. The sales lost to the domestic industry because of price have also had negative impacts on production and shipment volumes, capacity utilization, and profits.

As noted above, Petitioner believes that underselling by subject imports will be further demonstrated in the pricing data that the Commission will collect. For this purpose, Petitioner requests that that Commission collect pricing data (in dollars per square foot) for the four products described in the following table:[55]

Product No	**Sold as Material**	**Shape**	**Sold as Width**	**Sold as Length**	**Representative Product Size(s)**	**Proposed Channel of Distribution**
1	Porcelain	Rectangle	6"- 8"	24" - 36"	6" x 36"; 6" x 24"	Home Centers (*e.g.*, Home Depot, Lowes)
2	Porcelain	Square/Rectangle	12" - 24"	12" - 24"	12" x 12"; 12" x 24"; 20" x 20"	Regional Distributors/Floor Covering Wholesalers
3	Ceramic	Square/Rectangle	12" - 24"	12" - 24"	12" x 12"; 12" x 24"; 20" x 20"	Home Centers (*e.g.*, Home Depot, Lowes)
4	Ceramic	Square/Rectangle	3" - 10"	6" - 12"	3"x 6"; 3" x 10"; 6" x 6"; 8" x 8"	Other Retailers (*e.g.*, manufacturer owned stores, importer owned stores, kitchen/bath/flooring stores)

Both domestic ceramic tile and Chinese ceramic tile are sold through several channels in the U.S. market. Since these channels are at different levels of the market, Petitioner requests that the Commission collect separate pricing data for (i) sales to home centers (*e.g.*, Home Depot, Lowes), (ii) sales to regional distributors/floor covering wholesalers, and (iii) sales to other retailers (*e.g.*, manufacturer owned stores, importer owned stores, and kitchen, bath, and flooring

[55] Petitioner also suggests that the instructions in the Commission's questionnaires contain the following language: "For reporting purposes 'porcelain' tiles should include all sales of tiles that are packaged and otherwise marketed to the public as 'porcelain' without limitations of porosity or other physical factors. Similarly, products should be reported whether or not glazed and whether or not polished or otherwise superficially enhanced as sold."

stores), as proposed above. However, these pricing products are sold in multiple channels of distribution in the ceramic tile industry, but to ensure products are compared at the same level of trade we propose categorizing the pricing products as indicated above to collect useful pricing data.

4. Subject Imports Have Denied Domestic Industry's Improvement and Caused Material Injury to the Domestic Industry

When examining the impact of subject imports on the domestic industry, the Commission is instructed to "evaluate all relevant economic factors which have a bearing on the state of the industry in the United States."[56] The Commission is directed to evaluate all factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[57] In this case, the unique conditions demonstrate how the U.S. industry's performance was very much adversely affected by subject imports.

a) Conditions That Would Have Been Expected Under Current Circumstances

As a cyclical industry operating during a major upturn in the U.S. economy that is at or very close to its cyclical peak, the domestic industry's operating and net income as a percentage of net sales might appear high, in relation to the ratios the Commission normally sees in these cases. However, these ratios have been [ ] over the POI, as shown in the table below:[58]

		2016	2017	2018	
Domestic Industry Operating Margin	[	18.2%			]
Domestic Industry Net Margin	[	17.0%			]

[56] 19 U.S.C. § 1677(7)(C)(iii).

[57] *Id.*

[58] *See* Survey of the Coalition conducted by Counsel to Petitioner. Data represent aggregated data for [ ] companies.

In addition, the domestic industry's profitability levels are lower than would be expected in a cyclical upturn, as shown below:

Comparison of Domestic Producer Operating and Net Margins to Industry Benchmarks Reveals Domestic Producer Performance [ ] Despite Increase in Demand [59]

[

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Cyclical industries normally must earn higher returns in an upturn in order to survive poor returns in a downturn.[60] But in the current upturn, domestic producer prices barely changed. *See*

[59] *See* Survey of the Coalition conducted by Counsel to Petitioner; U.S. Census Bureau New Home Sales; National Association of Home Builders Remodeling Market Index (RMI). The New Home Sales and RMI indexes use the left Y axis, and the domestic industry's operating and net margins use the right Y axis in this graph.

[60] *See e.g., Certain Lined Paper School Supplies form China, India and Indonesia*, Inv. Nos. 701-TA-442-43 & 731-TA-1095-97 (Final), Pub. 3884 (Sept. 2006) at 24 (noting seasonal demand as a condition of competition); *see also, Certain Lined Paper School Supplies form China, India and Indonesia*, Inv. Nos. 701-TA-442-43 & 731-TA-1095-97 (Review), Pub. 4344 (Aug. 2012) at II-2 (noting the highly seasonal demand with the peak in the 2nd and 3rd quarter due to back-to-school promotions); *Grey Portland Cement and Cement Clinker from Mexico*, Inv. No. 731-TA-451 (Final), Pub. 2305 (Aug. 1990) at A-74 (noting the seasonal demand for cement during the height of summer when construction is highest).

above discussion concerning "Price Effects." Margins consequently suffered, and the domestic industry lost significant volume owing to the growth in volume and market share of subject imports, as discussed above.

b) Other Indicia Reinforce the Material Injury Caused by Subject Imports

The material injury to the domestic industry caused by subject imports has been demonstrated above by, among other factors, the significant and increasing volume of imports during the POI, the increasing market share of subject imports coupled with the [ ] of domestic producers, the price depression and suppression experienced by domestic producers, and the [ ] in the domestic industry's financial performance.

Other indicia reinforce a finding that subject imports have caused material injury to the domestic industry. Examples include the following:

- The survey conducted by Counsel to Petitioner revealed that, for [ ] of the reporting companies, their return on specific investments in their U.S. production facilities was negatively impacted during the POI. As one U.S. producer stated in its response to the survey of the Coalition: [ ][61]
- [ ] of the companies responding to the survey of the Coalition experienced cancellation, postponement, or rejection of expansion projects in their U.S. production facilities, and [ ] companies reduced their spending on research and development.

[61] *See* Survey of the Coalition conducted by Counsel to Petitioner.

- The number of production and related workers ("PRWs") [ ] over the full POI, by [ ] percent. The [ ] in the number of PRWs was [ ] between 2017 and 2018, when the domestic industry experienced a [ ] of [ ] percent in the number of PRWs.[62]

- The domestic industry experienced a [ ] in its end of year ("EOY") inventories during the POI, both in absolute terms and as a percentage of U.S. shipments. Specifically, EOY inventories rose from [ ] thousand square feet in 2016 ([ ] percent of U.S. shipments) to [ ] square feet in 2018 ([ ] percent of U.S. shipments). This [ ] occurred even though the domestic industry [ ] its production in 2018 as compared to 2017. *See* **Exhibit I-10**. As one domestic producer stated in its response to the survey of the Coalition: [

  ][63] This [ ] in inventories is a direct result of the presence of unfairly priced subject imports in the U.S. market, which caused lost sales and lost sales opportunities to the domestic industry during the POI.

- This [ ] in inventory caused domestic producers to curtail operations during the POI. As one domestic producer stated in its response to the survey of the Coalition: [

[62] *See* Exhibit I-11.

[63] *See* Survey of the Coalition conducted by Counsel to Petitioner.

][64] Other domestic producers also reported [ ] in inventory or [ ] sales volumes as the reason for temporary or permanent stoppages in kilns and supporting production processes.

But for the presence of low-priced subject imports, in a market where aggregate demand was increasing, domestic producers would have experienced higher output, sales, market share, capacity utilization, and profitability than they actually experienced during the POI. Subject imports are clearly a cause of material injury to the domestic ceramic tile industry.

c) Intellectual Property Violations by Subject Imports and Mislabeled Imports Contribute to the Injury Experienced by the U.S. Industry

Ceramic tile producers devote substantial time and resources to product design and development. TCNA, the Coalition, and its member companies have seen instances in which Chinese competitors have copied entire product catalogues or have knocked-off popular designs.[65]

Furthermore, this domestic industry has been profoundly affected by confusion in the U.S. marketplace between true "porcelain," as defined by ASTM and ISO testing standards, and so-called imported Chinese "porcelain," which many times fails to meet the internationally-recognized standard for porcelain, as defined by ASTM and ISO. Under U.S. and international standards, porcelain has the greatest degree of resistance to penetration by water. Porcelain tile is commonly used in installations requiring superior breaking strength, freeze/thaw resistance, and/or minimum expansion from exposure to water. Porcelain acquires such properties as a function of its manufacture resulting in very low water absorption (the industry-accepted definition of porcelain is tile with a water absorption coefficient by weight not exceeding 0.5%). A substantial

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[64] *See* Survey of the Coalition conducted by Counsel to Petitioner.

[65] *See* Exhibit I-14 (Examples of U.S. ceramic tile copied by Chinese tile).

portion of Chinese imports of "porcelain" tile do not meet this required criterion, but are nonetheless offered as "porcelain" to the U.S. public. Non-porcelain ceramic tiles absorb greater degrees of water and therefore can promote the growth of harmful molds and expand and fail in wet applications such as bathrooms and backsplashes.[66]

With roughly [ ] percent of U.S. demand for all ceramic tile now in the hands of imports ([ ] percent from China in 2018), and with 31 percent of total imports originating in China during the most recent 12 month period, the domestic industry is being injured by subject imports sold as "porcelain", but not truly porcelain under the U.S. standard. (*See* **Exhibits I-9** and **I-8**.) Consequently, sales of fake porcelain are discouraging demand for real porcelain tile and ceramic tile generally as consumers experience the aforementioned drawbacks of fake porcelain tile without knowing that the tiles in question are not, in fact, porcelain.

To the extent that the purchasing public is confused, the confusion is not limited to imports of ceramic tile from China, but to "ceramic tile" generally. As one U.S. producer reported, when Chinese tile is sold as porcelain but does not meet the water absorption requirement, this injures the domestic industry [

][67] Aided by the practice of dumping and government subsides, subject imports are discouraging the demand for ceramic tile produced domestically in the United States and putting downward pressure on prices. These circumstances challenge the Commission to develop analytical techniques that serve to measure the degree of this injury to the domestic industry. That injury is very real.

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[66] *See* https://www.tenatile.com/faqs/60-non-porcelain.html#faq55, attached as **Exhibit I-25**.

[67] *See* Survey of the Coalition by Counsel to Petitioner.

As shown above, the volume, price effects, and impact of the subject imports have been both significant and harmful. Accordingly, the Commission should find that subject imports have caused material injury to the domestic industry.

D. The Ceramic Industry Is Threatened with Further Injury Caused by Chinese Imports

Pursuant to Section 771(7)(F) of the Act, the Commission determines whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[68] The Act identifies a number of statutory criteria that are relevant to investigations, including *inter alia:* (i) countervailable subsidies involved, (ii) existing unused production capacity, (iii) a significant rate of increased import volume or market penetration by imports, (iv) import prices are likely to have a significant depressing or suppressing effect on domestic prices, (v) inventories of subject merchandise, (vi) a potential for product shifting, (vii) actual or potential negative effects on existing development and production efforts, and (viii) other demonstrable adverse trends.[69]

1. Chinese Producers of Ceramic Tile Products Are Largely Export-Oriented and Have a History of Dumping Ceramic Tile

China is far and away the world's largest producer of ceramic tile. The threat to the U.S. industry from China is real and imminent. Petitioner submits two authoritative studies that demonstrate this fact.

[68] 19 U.S.C. § 1677(7)(F)(ii).

[69] 19 U.S. C. § 1677(7)(F)(i).

The first authority is a publication by "Ceramic Information Weekly," with a statistical history ending in 2014.[70] The salient statistics are alarming. Chinese production increased by over six times in a period of 20 years. Ceramic tile exports from China increased by over 60 times. Ceramic tile production capacity in 2014 was 14 billion square meters, or roughly [ ] times aggregate U.S. apparent consumption in 2016. The daily capacity of ten production regions of construction ceramics exceeded one million square meters in 2014. The distribution of that capacity is focused on indoor wall tile, polished tile, outdoor wall tile, rustic tile, and full glazed polished tile. These types of tile are directly competitive with U.S. ceramic tile in the domestic market. An excerpt of the study is provided at **Exhibit I-15-A**.

A later third-party study, prepared by the Acimac Research Department, extends the statistical time series to 2017.[71] That study shows Asia accounting for 70 percent of global manufacturing in 2017. The European Union and Central-South America are very distant seconds, at 10 percent and 8 percent of global manufacturing, respectively. China's top 10 export markets, all of which are in Asia apart from the USA, account for 49 percent of its exports. The same study shows that in 2017 China's average export price was 4.5 Euros per square meter; this is well below contemporaneous U.S. producers' prices. Petitioners have identified literally hundreds of Chinese companies engaged in the production and/or sale of the subject merchandise.[72]

China also has a history of dumping in other major markets outside the United States. That fact is extremely important in this case because it suggests a presumption that dumping outside the

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[70] "Statistics Concerning China Construction Ceramics in the Period of 20 Years," Ceramic Information Weekly, both native language Chinese and English versions are attached as Exhibit I-15-A.

[71] "World production and consumption of ceramic tiles," Research Department of the Association of Italian Manufacturers of Machinery and Equipment for Ceramics, presented in CWR 128/2018, attached as **Exhibit I-15-B**.

[72] *See* Exhibit I-5.

United States engenders dumping inside the United States and actual or threatened injury to the U.S. domestic industry.

For this investigation, such history has greater importance than in most other cases coming before the Commission. As noted above, the EU has imposed antidumping duties on imports of ceramic tile from China since March 16, 2011. The order was reviewed in 2017 and is currently set to expire in 2022. South Korea, Mexico, India, and Pakistan also impose antidumping duties on certain ceramic tile imports from China. Saudi Arabia, which vies with the United States to be the world's largest export market for ceramic tile, and Pakistan recently filed a trade remedy case against China. It is critical that the Commission closely analyze the impact of these measures on Chinese trade and the resulting propensity of Chinese producers to increase exports to the United States in the very near term.[73]

As a starting point in that exercise, the Commission should consider the size of the markets now protected by antidumping measures against China. Referring to the second study cited above, in 2017, consumption of ceramic tile in the European Union and Central-South America regions accounted for 51 percent of world consumption of ceramic tile excluding domestic consumption in Asia. Of the residual, 2,107 million square meters, North America accounted for 27 percent.[74] Therefore, absent relief from unfair trade the U.S. market is a lightning rod for increased unfairly priced imports from China.

The discussion below addresses the other relevant statutory standards for threat determinations within this market context.

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[73] *See* Exhibit I-2.

[74] *See* Exhibit I-15-B.

2. The Chinese Government Encourages Exportation of Subject Merchandise Through Countervailable Subsidies

For part of its threat analysis, the Commission considers "if a countervailable subsidy is involved" and, in particular, "whether the countervailable subsidy is a subsidy described in Article 3 or 6.1" of the WTO Agreement on Subsidies and Countervailing Measures (the "WTO Subsidies Agreement").[75] Article 3 of the WTO Subsidies Agreement describes prohibited subsidies as those that are contingent upon export performance or upon the use of domestic over imported goods.[76] As demonstrated in this Petition, subject producers and exporters have benefited from substantial subsidies. Among the more significant of these are:

- Preferential loans and interest rates;
- Preferential tax programs;
- Indirect tax programs and Value-Added Tax;
- Provision of land, goods, and services for less than adequate remuneration;
- Grant programs;
- Special economic development zones or other regional programs; and
- Benefit programs for Foreign Investment Enterprises.

3. The Volume and Market Penetration of Subject Imports Increased, Indicating a Likelihood of Substantially Increased Imports

The Commission must consider whether "a significant rate of increase of the volume or market penetration of imports of the subject merchandise" occurred when determining whether the domestic industry is threatened with material injury from the subject imports.[77] In this case, both the volume and market penetration of the subject imports increased significantly over the period of investigation. As shown above, the quantity of subject imports increased by 19 percent between

[75] 19 U.S.C. § 1677(7)(F)(i)(I).

[76] Agreement on Subsidies and Countervailing Measures (Apr. 15, 1994), Marrakesh Agreement Establishing the World Trade Organization, Annex 1, 1867 U.N.T.S. 14 ("World Trade Subsidies Agreement") at Art. 3.

[77] 19 U.S.C. § 1677(7)(F)(i)(III).

2016 and 2018. The most recent import data on subject imports demonstrate that there is a serious threat of further injury to the domestic industry. Subject imports in December 2018 were 11 percent higher than in December 2017, and as noted, in December 2018 the volume of subject imports exceeded the total volume of U.S. domestic shipments for the first time.

Subject imports hold a significant market share, at [ ] of apparent U.S. consumption during the POI. Moreover, subject imports' market share has [ ] over the POI, and has come at the expense of U.S. producers' market share.[78]

4. Capacity Data for Chinese Ceramic Tile Producers Indicate a Likelihood of Substantially Increased Imports

The statute provides that in making a threat determination, the Commission is required to consider "any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports," taking into account the availability of other export markets to absorb additional exports by subject producers.[79] This factor weighs heavily in favor of an affirmative threat determination.

Complete data on the total capacity of Chinese producers to make ceramic tile are not reasonably available to Petitioner. However, the evidence that is publicly available is more than sufficient to establish that there is massive capacity to produce ceramic tile in China. Indeed, Petitioner has identified at **Exhibit I-5** over a hundred Chinese producers and exporters of ceramic tile. A publicly-available market research report shows that China's annual ceramic tile production capacity increased by 29 percent in just three years (from 2011 to 2014), reaching approximately 14 billion square meters.[80] As noted above, this level of capacity dwarfs the size of the domestic

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[78] *See* Exhibit I-8.

[79] 19 U.S.C. § 1677(7)(F)(i)(II).

[80] *See* Exhibit I-15-A.

U.S. market for ceramic tiles. While not from the same source, another market research report pegs Chinese production of ceramic tile in 2014 at 6 billion square meters.[81] This implies that Chinese capacity utilization may have been only about 43 percent in 2014.

Chinese production of ceramic tile was 6,400 million square meters in 2017, an increase of 7 percent over 2015, and accounting for just over 47 percent of world production in that year.[82] In comparison, U.S. imports from China in 2017 were roughly 61 million square meters, or less than one percent of Chinese production in that year. Clearly, the Chinese industry has the ability to continue to inundate the U.S. market with unfairly traded ceramic tile if relief is not granted.

While China is the world's largest producer of ceramic tile, it is also the world's largest consumer of these products. However, recent developments in the Chinese economy indicate that ceramic tile consumption in China may be on the decline, and thus China will have even more incentive to export its ceramic tile products, particularly to countries that do not have sufficient trade remedies in place. As discussed above, the ceramic tile industry in the United States is cyclical and is heavily influenced by the general economy and housing/construction activity. It is reasonable to assume that the same holds true for the Chinese ceramic tile industry.

While still exhibiting growth, China's economy has shown signs of slowing. For example, in November 2018, industrial production growth decelerated to 5.4 percent, retail sales posted the weakest performance since May 2003, and Chinese stocks fell along with the currency "as data signaled a deepening slowdown."[83] For the full year of 2018, China's economy grew by 6.6

[81] "World Production and Consumption of Ceramic Tiles," 6th Edition, Year 2018, Association of Italian Manufacturers of Machinery and Equipment for Ceramics, at 23, attached as Exhibit I-15-C.

[82] *Id.*

[83] "China's Economy Still Slowing as Policy Makers Form 2019 Plans," Bloomberg News, December 13, 2018, attached as Exhibit I-16.

percent, as compared to a growth rate of 6.8 percent in 2017. While some analysts debate the official Chinese statistics and peg China's growth at a lower figure, "the direction is clear, and the slowdown is being felt nationwide."[84] The IMF's October 2018 estimate of Chinese GDP growth for 2019, at 6.2 percent, was 0.2 percentage points lower than its April 2018 estimate. The IMF cited ongoing trade disputes as a major drag on the Chinese economy.[85] More recently, China has lowered its targeted GDP growth for 2019 to a range of 6.0 to 6.5 percent. Bloomberg notes that "{t}he lower bound of the GDP target would be the slowest pace of economic growth in almost three decades."[86]

The outlook is that China's housing market will suffer declines. A November 2018 article on this topic states that: "China International Capital Corporation ("CICC") said new home sales could slide 10 percent, S&P Global Ratings said prices may fall by as much as 5 percent and CGS-CIMB Securities predicted a 10 percent decline in prices and sales volumes."[87] CICC has dubbed 2019 the "year of recession" for China's real estate market, noting that sales are expected to fall for the first time in five years.[88] A Reuters poll published in December 2018 found that analysts expect housing sales in China to fall by 5 percent in 2019, and housing prices to rise only 0.5 percent in 2019, which would be "the weakest annual rise in five years in a sector that traditionally has been one of the country's major growth drivers and store of household wealth."[89] In this

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[84] "Chinese economy slows to lowest growth rate in 28 years," The Washington Post, January 21, 2019, attached as **Exhibit I-17**.

[85] "China GDP to grow 6.2% in 2019: IMF," Global Times, published October 9, 2018, attached as **Exhibit I-18**.

[86] "China Lowers Growth Target and Cuts Taxes as Economy Slows," Bloomberg News, March 4, 2019, attached as **Exhibit I-19**.

[87] "China's Housing Market Heading for 'Year of Recession,' Says CICC," Bloomberg News, November 12, 2018, attached as **Exhibit I-20**.

[88] *Id.*

[89] "China property to cool in 2019, weigh on economy, curbs may be eased: Reuters poll," Reuters Business News, December 10, 2018, attached as **Exhibit I-21**.

environment, it is reasonable to expect that domestic consumption of ceramic tile in China will also exhibit declines. A slowdown in the domestic market means that Chinese producers will look to increase their export sales and decrease their selling prices in export markets. As a result, the U.S. ceramic tile industry is clearly threatened with further material injury.

5. The Likely Price Effects of Subject Imports Are Significant

In determining whether the domestic industry is threatened with material injury, the Commission should consider "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."[90] As demonstrated above, Chinese imports are underselling the domestic like product and are likely to continue doing so in the future. Furthermore, the increase in market share held by subject imports plainly shows that those imports are entering this market at prices that "are likely to increase demand for further imports." Accordingly, this statutory factor shows that in the absence of trade relief, the likely price effects of subject imports will be significant.

6. The Likely Impact of Subject Imports is Significant

The Statute provides that in assessing the threat to the domestic industry from subject imports, the Commission must consider "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."[91] As discussed above with respect to present material injury, the significant presence of subject imports in this market made

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[90] 19 U.S.C. § 1677(7)(F)(i)(IV).

[91] *Id.* § 1677(7)(F)(i)(VIII).

it impossible for domestic producers to take full advantage of strong market conditions during the period of investigation. In fact, rather than experiencing record and growing levels of profitability that are consistent with the highly favorable market conditions for ceramic tile in the United States, the domestic industry has experienced [ ] in shipments in 2018, a [ ] in market share in 2018, and [ ].

As discussed above, and as illustrated in the chart below, the most recent quarterly data on the domestic shipments by TCNA members show that, beginning in the fourth quarter of 2017, U.S. producers' shipments have [ ]. *See* **Exhibit 1-22**. This development indicates that the domestic ceramic tile industry is highly susceptible to further injury by subject imports.

U.S. Producers' U.S. Shipments of Ceramic Tile [92]

[ ]

An historical analysis of imports from China reveals a huge increase in volume over time. The chart below illustrates that the increase in subject imports has far surpassed the increase in both nonsubject imports and U.S. producers' shipments. This steady and dramatic increase over time signifies the very real threat of additional material injury to the domestic industry as a result of continued high import volumes from China.

[92] U.S. Producers' U.S. shipments data from Tile Council of North America, Inc. ("TCNA").

Threat of Further Material Injury is Apparent [93]

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E. Conclusion

Accordingly, in conclusion, all statutory factors support a finding that imports of ceramic tile from China have caused material injury to the domestic industry and that such imports threaten additional material injury. The Commission should therefore make an affirmative determination in these investigations.

[93] U.S. Producers' U.S. Shipments data from Tile Council of North America, Inc. ("TCNA"); import data from U.S. Census Bureau Official Import Statistics for HTS Headings 6907 and 6908.