

DEPARTMENT OF COMMERCE**International Trade Administration**

[C-570-940]

Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Department) has determined that countervailable subsidies are being provided to producers and exporters of certain tow-behind lawn groomers (lawn groomers) and certain parts thereof from the People's Republic of China (PRC). For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section, below.

EFFECTIVE DATE: June 19, 2009.

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

SUPPLEMENTARY INFORMATION:**Period of Investigation**

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

Case History

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

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

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

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

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

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

Scope of the Investigation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Scope Comments

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

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

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

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) is required to determine pursuant to section 701(a)(2) of the Act whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a United States industry. On August 21, 2008, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from the PRC of subject merchandise. *See Certain Tow-Behind Lawn Groomers and Parts Thereof From China Determinations*, 73 FR 49489 (August 21, 2008); and *Certain Tow-Behind Lawn Groomers and Parts Thereof from China (Preliminary)*, USITC Pub. 4028, Inv. Nos. 701-TA-457 and 731-TA-1153 (August 2008).

Analysis of Comments Received

All issues raised in the case brief submitted by the GOC are addressed in the *Decision Memorandum*. Attached to this notice as an Appendix is a list of

the issues that parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find this public memorandum in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the internet at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Use of Adverse Facts Available

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

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the companies under investigation, Superpower and Princeway. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an all others rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. As Princeway's rate was *de minimis*, it is not included in the all others rate.

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

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

In accordance with section 703(d) of the Act, we instructed U.S. Customs and Border Protection to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered on or after March 24, 2009, but to continue the suspension of liquidation of entries made from November 24, 2008 through March 23, 2009.

We will issue a countervailing duty order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above, except for Princeway, which has a *de minimis* rate and will be excluded from an order. This exclusion will apply only to subject merchandise both produced and exported by Princeway. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

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

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/

destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

Dated: June 12, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

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

Comment 2: Double Counting/
Overlapping Remedies

Comment 3: Cut-off Date for
Countervailing Subsidies

Comment 4: Discount Rate Used for
Benefit Calculations

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

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

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

Comment 8: Import Tariff and VAT
Exemptions for Encouraged Industries

Importing Equipment for Domestic
Operations

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

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

Comment 11: Calculation of the All
Others Rate

Comment 12: Whether to Clarify the
Scope Language for Hitches

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