presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: January 16, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–1711 Filed 1–27–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–939)

Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

EFFECTIVE DATE: January 28, 2009.

SUMMARY: The Department of Commerce (the ''Department'') preliminarily determines that certain tow behind lawn groomers and certain parts thereof (''lawn groomers'') from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (the ''Act''). The estimated dumping margins are shown in the ''Preliminary Determination Margins'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Thomas Martin, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4081or (202) 482–3936, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2008, the Department received a petition concerning imports of certain non–motorized tow behind lawn groomers and certain parts thereof from the PRC filed in proper form by Agri–Fab Inc. (''Agri–Fab'', hereafter referred to as ''Petitioner''). *See* Petition for the Imposition of Antidumping Duties: Certain Tow Behind Lawn Groomers and Parts Thereof from the People's Republic of China, dated June 24, 2008 (''Petition''). The Department initiated an antidumping duty investigation of lawn groomers from the PRC on July 21, 2008. *See Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 42315 (July 21, 2008) (''*Initiation Notice*'').

On July 14, 2008, the Department requested quantity and value (''Q&V'') information from the twelve companies that were identified in the Petition as potential producers or exporters of lawn groomers from the PRC. *See* Exhibit I–19 of the Petition. The Department received timely responses to its Q&V questionnaire from the following companies: Qingdao Huatian Hand Truck Co., Ltd., Jiashan Superpower Tools Co., Ltd., T.N. International, Inc., Nantong Duobang Machinery Co., Ltd., and Princeway Furniture (Dong Guan) Co., Ltd. Five companies to which the Department sent the Q&V questionnaire received the questionnaire but did not respond. These non–responsive companies were: Hangzhou Geesun International Co., Ltd., Qingdao Huandai Tools Co., Ltd., Qingdao Taifa Group Co., Ltd., Maxchief Investments Ltd., and Qingdao EA Huabang Instrument Co., Ltd.

With regard to two additional companies, World Factory, Inc., and Sidepin, Ltd., on July 21, 2008, we spoke with Federal Express, via telephone, and were informed that, although World Factory, Inc., originally accepted delivery of the Q&V questionnaire, it ultimately rejected our mailing and returned the package to Federal Express. In addition, on July 21, 2008, we spoke via telephone with DHL and were informed that DHL was unable to deliver our mailing to Sidepin, Ltd., due to a ''bad address.''[1] *See* Memorandum to The File, from Maisha Cryor, Senior Import Compliance Specialist, Regarding ''Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Summary of Issuance of Quantity and Value Questionnaires,'' dated July 21, 2008.

On August 21, 2008, the International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of lawn groomers from the PRC. *See CertainTow–Behind Lawn Groomers and Certain Parts Thereof from China Determinations Investigation Nos. 701–TA–457 and 731–TA–1153 (Preliminary*), 73 FR 49489 (August 21, 2008).

On August 18, 2008, the Department selected Jiashan Superpower Tools Co., Ltd. (''Superpower''), and Princeway Furniture (Dong Guan) Co., Ltd. (''Princeway''), as mandatory respondents and issued antidumping duty questionnaires to the companies. *See* Memorandum regarding ''Selection of Respondents for the Antidumping Duty Investigation of Certain Tow Behind Lawn Groomers and Parts Thereof from the People's Republic of China,'' dated August 18, 2008 (''Respondent Selection Memorandum'').

Superpower and Princeway submitted timely responses to the Department's antidumping duty questionnaire on September 24, 2008, and October 14, 2008, respectively. On July 23, 2008, and July 30, 2008, the Department received separate–rate applications from Nantong D&B Machinery Co., Ltd., and Qingdao Huatian Truck Co., Ltd., respectively.

The Department issued supplemental questionnaires to, and received responses from, Superpower and Princeway from September through December 2008. Petitioner submitted comments to the Department regarding Princeway's and Superpower's responses to sections C and D of the antidumping duty questionnaire on October 24, 2008 and additional comments on Princeway's submissions on December 2, 2008.

On September 30, 2008, the Department released a memorandum to interested parties which listed potential surrogate countries and invited interested parties to comment on surrogate country and surrogate value selection. *See* Memorandum to All Interested Parties Regarding Antidumping Duty Investigation of Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China (''PRC''). On October 17, 2008, and October 28, 2008, Petitioner and Princeway submitted comments and rebuttal comments,

[1] The petitioner provided contact information for the twelve Chinese producers/exporters of lawn groomers named in the Petition. *See* Petition at Exhibit I-19. However, upon noticing that several of the addresses provided were incomplete, the Department asked the petitioner to update the aforementioned contact information to account for full addresses, *e.g.*, contact name, postal code, street names and numbers, *etc. See* the Department's July 3, 2008, supplemental questionnaire at 3. In response, the petitioner provided updated contact information, but noted that this information represented its ''best attempt using reasonably available information to update the Chinese manufacturer and exporter contact information.'' *See* Supplement to the Petition at 2 and Exhibit 2, dated July 8, 2008.

respectively, on the appropriate surrogate country and surrogate values.

On November 5, 2008, the Petitioner made a request for a 50–day postponement of the preliminary determination. On November 17, 2008, the Department extended this preliminary determination by fifty days. *See Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 73 FR 67836 (November 17, 2008).

Period of Investigation

The period of investigation (''POI'') is October 1, 2007, through March 31, 2008. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, *i.e.*, June 2008. *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

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

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

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

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

Also included in the scope of the investigations are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units–when imported with one or more lawn grooming modules–with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the investigations. Modular unit chasses, imported without a lawn grooming module and with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the investigations. When imported separately, modules that are designed to perform subject lawn grooming functions (*i.e.*, sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

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

1) an assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;
2) a sweeper brush;
3) an aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;
4) a spreader hopper;
5) a rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;
6) dethatcher tines;
7) aerator spikes, plugs, or other aerating component; or
8) a hitch.

The major components or parts of lawn groomers that are individually covered by these investigations under the term ''certain parts thereof'' are: (1) brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

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

incorporate an aerator component (*e.g.*, ''drum–style'' spike aerators).

The lawn groomers that are the subject of these investigations are currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.80.0010, 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 these investigations.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 21 calendar days of issuance of that notice. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice*, 73 FR at 42316. On December 30, 2008, Brinly–Hardy Company (''Brinly–Hardy''), a domestic producer of the subject merchandise, submitted comments on the scope of the investigation. We have given all interested parties an opportunity to submit comments. *See* Memorandum from Thomas Martin, International Trade Compliance Analyst, to file, ''Deadline for Comments on Brinly–Hardy Company's December 30, 2008 Submission: Antidumping Duty Investigation of Certain Tow Behind Lawn Groomers from the People's Republic of China,'' dated January 5, 2009. We will evaluate the comments for the final results.

Non–Market Economy Treatment

The Department considers the PRC to be a non–market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof (TRBs), Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *TRBs, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). The Department has not revoked the PRC's status as an NME country. Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our current NME methodology.

Selection of a Surrogate Country

In antidumping proceedings involving NME countries, where the available information does not allow the Department to determine normal value (''NV'') pursuant to section 773(a) of the Act, the Department will base NV on the value of the NME producer's factors of production. *See* section 773(c)(1) of the Act. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of merchandise comparable to the subject merchandise. The Department has determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries that are at a level of economic development comparable to that of the PRC. *See* Memorandum regarding Request for a List of Surrogate Countries for the Antidumping Duty Investigation of Tow–Behind Lawn Groomers (''TBLG'') from the People's Republic of China (''PRC'')'' dated September 30, 2008 (''Policy Memorandum'').

As noted above, in October 2008, Petitioner and Princeway submitted comments on the appropriate surrogate country. In their comments, each party stated that India satisfies the statutory criteria for surrogate country selection because it is at a comparable level of economic development with the PRC and it is a significant producer of comparable merchandise that is sufficiently similar to the subject merchandise. However, since India does not produce or export lawn groomers, Petitioner and Princeway disagreed on the definition of what constitutes comparable merchandise. In its comments, Petitioner claimed that hand trucks represent the most comparable merchandise to lawn groomers. Princeway, in its comments, argued that agricultural implements should be used as comparable merchandise.

After evaluating interested parties' comments, the Department selected India as the surrogate country for this investigation and decided that because the lawn groomers and hand trucks industries use many of the same raw material inputs and similar production processes, hand trucks constitute comparable merchandise. For further discussion, see Memorandum from Zhulieta Willbrand, International Trade Compliance Analyst, to Abdelali Elouaradia, Office Director, ''Antidumping Duty Investigation of Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Selection of a Surrogate Country,'' dated January 21, 2009. In sum, the Department determined that: 1) India is at a level of economic development comparable to that of the PRC; and 2) India is a significant producer of merchandise comparable to the subject merchandise. Upon the publication of the preliminary results, the Department notes that interested parties may submit additional information on comparable merchandise within the confines of the new factual information submission deadlines. *See* 19 CFR 351.301(b)(1).

Separate Rates

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate–rate status in NME investigations. *See Initiation Notice*, 73 FR at 42318–19. The process requires exporters and producers to submit a separate–rate status application. *See Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries*, (April 5, 2005) (''*Policy Bulletin 05.1*''), available at *http://ia.ita.doc.gov/policy/bull05–1.pdf*. However, the standard for eligibility for a separate rate, which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities, has not changed.

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's practice to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in *Notice of Final*

Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). In accordance with the separate–rate criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

Two separate rate applicants, Qingdao Huatian Truck Co., Ltd. (''Huatian''), and Nantong D & B Machinery Co., Ltd. (''Nantong''), and one mandatory respondent, Superpower, stated that they are partially Chinese–owned companies. Therefore, the Department must analyze whether the mandatory respondent and separate rate applicants can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. Each company provided company–specific information to demonstrate that it operates free from *de jure* and *de facto* government control, and therefore, is entitled to a separate rate.

An additional mandatory respondent, Princeway, provided company–specific separate–rate information and stated that the standards for the assignment of separate rates have been met because it is a privately–owned company incorporated in the British Virgin Islands and based in Hong Kong. *See* Princeway's ''Separate Rate Application,'' dated September 19, 2008, and ''Separate Rate Application Supplemental Response Questionnaire,'' dated October 21, 2008. Because Princeway is foreign owned, it is not necessary to undertake additional separate–rates analysis for the Department to determine that the export activities of Princeway are independent from the PRC government's control. Accordingly, Princeway is eligible for a separate rate. *See*, *e.g.*, *Brake Rotors From the People's Republic of China: Final Results of the Tenth New Shipper Review*, 69 FR 52228 (August 25, 2004).

Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

The evidence provided by Huatian, Nantong and Superpower indicates that there are no restrictive stipulations associated with their export and/or business licenses and that there are legislative enactments decentralizing control of the companies. The Department's analysis of the record evidence supports a preliminary finding of absence of *de jure* control. *See* ''Response to the Separate Rate Application'', dated September 4, 2008, ''Response to the Separate Rate Application Supplemental Questionnaire,'' dated September 27, 2008, and ''Response to the Separate Rate Application Supplemental Questionnaire dated October 7, 2008,'' dated October 15, 2008, from Nantong (''Nantong's SRA''). *See also* ''Huatian's Separate Rate Application,'' dated September 29, 2008, ''Response to the Separate Rate Application Supplemental Questionnaire,'' dated October 9, 2008, and ''Response to the Separate Rate Application Supplemental Questionnaire,'' dated November 4, 2008 (''Huatian's SRA''). For Superpower, see ''Response to the Separate Rate Application,'' dated September 24, 2008, and ''Response to the Separate Rate Application Supplemental Questionnaire,'' dated October 23, 2008 (''Superpower's SRA'').

Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

In this case, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of governmental control with respect to Huatian, Nantong and Superpower based on record statements and supporting documentation showing that the companies: (1) set their own export prices independent of the government and without the approval of a government authority; (2) retain their proceeds from sales and make independent decisions regarding disposition of profits or financing of losses; (3) have the authority to negotiate and sign contracts and other agreements; and (4) have autonomy from the government regarding the selection of management. *See* Nantong's SRA, Huatian's SRA and Superpower's SRA.

The evidence placed on the record of this investigation by Huatian, Nantong and Superpower demonstrates an absence of *de jure* and *de facto* government control with respect to these exporters' sales of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we have preliminarily granted a separate rate to all three exporters. The Department has calculated company–specific dumping margins for the two mandatory respondents, Superpower and Princeway, and assigned to Huation and Nantong, a dumping margin equal to a simple average of the dumping margins calculated for the two mandatory respondents.

Additionally, we note that while we received the Q&V information from T.N. International, Inc., one of the five companies which responded to the Q&V questionnaire, the company was not selected by the Department as a mandatory respondent. As indicated in the *Initiation Notice*, where T.N. International, Inc., had an opportunity to request a separate rate, it failed to do so. Consequently and according to our practice, we assigned to T.N. International, Inc., preliminarily the PRC–wide rate.

The PRC–Wide Entity

Although PRC exporters of subject merchandise to the United States were given an opportunity to provide Q&V information to the Department, not all exporters responded to the Department's request for Q&V information.[2] Based upon our knowledge of the volume of imports of subject merchandise from the PRC, we have concluded that the companies that responded to the Q&V questionnaire do not account for all U.S. imports of subject merchandise from the PRC made during the POI.[3] We have

[2] The Department received only five timely responses to the requests for Q&V information that it sent to twelve potential exporters identified in the Petition.

[3] *See* Respondent Selection Memorandum.

treated the non–responsive PRC producers/exporters as part of the PRC–wide entity because they have not demonstrated their eligibility for a separate rate.

Section 776(a)(2) of the Act provides that the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified.

As noted above, the PRC–wide entity withheld information requested by the Department. As a result, pursuant to section 776(a)(2)(A) of the Act, we find it appropriate to base the PRC–wide dumping margin on facts available. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986, 4991–92 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000); see also Statement of Administrative Action, accompanying the Uruguay Round Agreements Act , H.R. Rep. No. 103–316, Vol. I at 843 (1994) (''*SAA*''), reprinted in 1994 U.S.C.C.A.N. 4040 at 870. Because the PRC–wide entity did not respond to the Department's request for information, the Department has concluded that the PRC–wide entity has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

Section 776(b) of the Act authorizes the Department to use, as adverse facts available (''AFA''): (1) information derived from the petition; (2) the final determination from the LTFV investigation; (3) a previous administrative review; or (4) any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of: (a) the highest margin alleged in the petition, or (b) the highest calculated rate for any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products From the People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decisions Memorandum at ''Facts Available.'' Here, we assigned the PRC–wide entity the dumping margin calculated for Superpower, which exceeds the highest margin alleged in the petition and is the highest rate calculated in this investigation. Pursuant to section 776(c) of the Act, we do not need to corroborate this rate because it is based on information obtained during the course of this investigation rather than secondary information. *See also SAA* at 870. The PRC–wide dumping margin applies to all entries of the merchandise under investigation except for entries of subject merchandise from Superpower,[4] Princeway, Nandong and Huatian.

Fair Value Comparisons

To determine whether Princeway and Superpower sold lawn groomers to the United States at LTFV, we compared the weighted–average export price (''EP'') of the lawn groomers to the NV of the lawn groomers, as described in the ''U.S. Price,'' and ''Normal Value'' sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, for both Superpower and Princeway, we based the U.S. price of sales on EP because the first sale to unaffiliated purchasers was made prior to importation and the use of constructed export price was not otherwise warranted. In accordance with section 772(c) of the Act, we calculated EP for Superpower and Princeway by deducting the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: foreign movement expenses and foreign brokerage and handling expenses.

We based these movement expenses on surrogate values where the service was purchased from a PRC company. For details regarding our EP calculation, *see* Analysis Memoranda for Superpower and Princeway, dated January 21, 2009.

Normal Value

In accordance with section 773(c) of the Act, we constructed NV from the factors of production employed by Princeway and Superpower to manufacture subject merchandise during the POI. Specifically, we calculated NV by adding together the value of the factors of production, general expenses, profit, and packing costs, as well as an adjustment for the byproduct. We valued the factors of production using prices and financial statements from India, the surrogate country selected for this investigation or where appropriate, the prices paid for the input, in accordance with 19 CFR 351.408(c)(1).[5] In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing values which are non–export average values, product–specific, tax–exclusive, and contemporaneous with, or closest in time to, the POI. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). We also considered the quality of the source of surrogate information in selecting surrogate values.

We valued material inputs and packing materials by multiplying the amount of the factor consumed in producing subject merchandise by the

[4] Because the Department based the PRC-wide dumping margin on Superpower's dumping rate, both rates are equal. However, Superpower has its own separate rate and is not part of the PRC-wide entity.

[5] Superpower reported that it purchased no factors of production from market economy suppliers during the POI. *See* Superpower's October 14, 2008, Section D Response at D-5. Princeway purchased certain factors of production from market economy suppliers. *See* Princeway's October 10, 2008, Section D Response at 8

average unit value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407 (Fed. Cir. 1997). Where we could only obtain surrogate values that were not contemporaneous with the POI, we inflated (or deflated) the surrogate values using the Wholesale Price Index (''WPI'').

Further, in calculating surrogate values from Indian imports, we disregarded imports from Indonesia, South Korea and Thailand because in other proceedings the Department found that these countries maintain broadly available, non–industry-specific export subsidies. Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1; *see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.[6] Thus, we have not used prices from these countries in calculating the Indian import–based surrogate values.

We valued raw materials and packing materials obtained from non–market economy suppliers using Indian import statistics. *See* Surrogate Value Memorandum. We valued water using data from the Maharashtra Industrial Development Corporation[7] because that data include a wide range of industrial water tariffs. This source provides 344 industrial water rates within the Maharashtra province from June 2003: 172 for the ''inside industrial areas'' usage category, and 172 for the ''outside industrial areas'' usage category. *See* Surrogate Value Memorandum.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country–wide, publicly–available information on tax–exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. *See* Surrogate Value Memorandum.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the most recently calculated regression–based wage rate, which relies on 2005 data. This wage rate can be found on the Import Administration's home page. *See* ''Expected Wages of Selected NME Countries,'' available at *http://ia.ita.doc.gov/wages/index.html* (revised May 2008). The source of these wage rate data on the Import Administration's web site is the International Labour Organization, Geneva, Labour Statistics Database Chapter 5B: Wages in Manufacturing. Since this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by Princeway and Superpower. *See* Surrogate Value Memorandum.

As noted above, we valued inland truck freight expenses using a deflated per–unit average rate calculated from data on the following web site: *http://www.infobanc.com/logistics/logtruck.htm*. *See* Surrogate Value Memorandum. The logistics section of this website contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POI, we deflated the rate using WPI data.

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by: (1) Agro Dutch Industries Ltd. in the antidumping duty administrative review of certain preserved mushrooms from India, (2) Kejirwal Paper Ltd. in the less than fair value investigation of certain lined paper products from India, and (3) Essar Steel in the antidumping duty administrative review of hot–rolled carbon steel flat products from India.[8] *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006); and *Certain Hot–Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2021 (January 12, 2006), unchanged in *Certain Hot–Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Administrative Review*, 71 FR 40694 (July 18, 2006). We inflated the brokerage and handling rate using the appropriate WPI inflator. *See* Surrogate Value Memorandum.

We valued factory overhead, selling, general, and administrative (''SG&A'') expenses, and profit, using the financial ratios calculated from the 2006–2007 audited financial statement of one Indian producer of hand trucks: Godrej & Boyce Manufacturing Company Limited. *See* Surrogate Value Memorandum.

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information with which to value factors of production in the final determination within 40 days after the date of publication of the preliminary determination.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the

[6] In addition, as explained in the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized. *See Omnibus Trade and Competitiveness Act of 1988*, Conference Report to Accompanying H.R. Rep. 100-576 at 590 (1988). As such, it is the Department's practice to base its decision on information that is available to it at the time it makes its determination.

[7] Website available at *http://www.midcindia.org*.

[8] Use of these averages is consistent with the Department's normal practice to calculate brokerage and handling expenses. Absent product-specific data, the Department's preference is to average these data sources because they represent values for numerous transactions that are available for a range of products and minimize the potential distortions that might arise from a single price source. One value, taken in isolation, could differ significantly when compared across a range of products, values, and special circumstances of a single transaction. *See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007), and accompanying Issues and Decision Memorandum at Comment 5.

exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation. *See Initiation Notice*, 73 FR at 42319. This change in practice is described in *Policy Bulletin 05.1*, which states:

> {W}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise *both* exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

See Policy Bulletin 05.1 at 6.

Preliminary Determination Margins

The Department has determined that the following weighted–average dumping margins exist for the POI:

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Jiashan Superpower Tools Co., Ltd.[9]	324.43
Princeway Furniture (Dong Guan) Co., Ltd.[10]	12.07
Nantong D & B Machinery Co., Ltd.[11]	168.25
Qingdao Huatian Truck Co., Ltd.[12]	168.25
PRC–wide Entity	324.43

[9] Jiashan Superpower Tools Co., Ltd., manufactures and exports subject merchandise.

[10] Princeway Furniture (Dong Guan) Co., Ltd., manufactures and exports subject merchandise.

[11] Nantong D & B Machinery Co., Ltd., manufactures and exports subject merchandise.

[12] Qingdao Huatian Truck Co., Ltd., manufactures and exports subject merchandise.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of lawn groomers from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

The Department has determined in its *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) (''*CVD Lawn Groomers Prelim*''), that the product under investigation, exported and produced by Superpower, benefitted from an export subsidy. Normally, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted–average amount by which the NV exceeds the EP, as indicated above, minus the amount determined to constitute an export subsidy. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India*, 69 FR 67306, 67307 (November 17, 2007). Therefore, for merchandise under consideration exported and produced by Superpower entered or withdrawn from warehouse, for consumption on or after publication date of this preliminary determination, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted–average margin indicated above, adjusted for the export subsidy rate determined in *CVD Lawn Groomers Prelim* (*i.e.*, Income Tax Reduction for Export–Oriented Enterprises countervailable subsidy of 0.15 percent *ad valorem*). The adjusted cash deposit rate is 324.28 percent. Furthermore, *CVD Lawn Groomers Prelim* indicates preliminarily that Superpower received a countervailable subsidy of 0.64 percent *ad valorem* under the ''Refund of Enterprise Income Taxes on FIE Profits Reinvested in an EOE'' program. *See CVD Lawn Groomers Prelim* at 70978. This subsidy contains both domestic and export subsidy components. However, for the preliminary results of this investigation, the Department will not be able to apply the export subsidy component to Superpower's antidumping margin. For the final results, if applicable, the Department will calculate the subsidy rates for each component and apply the export subsidy portion to Superpower's antidumping margin.

Regarding all separate–rate recipients that were not selected as mandatory respondents, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the average of the margins calculated for the mandatory respondents, adjusted for their respective export subsidy rates, if applicable, from *CVD Lawn Groomers Prelim*.

For the remaining exporters, pursuant to section 733(d)(1)(B), we will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the normal value exceeds U.S. price, as follows: (1) the rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the PRC–wide rate; and (3) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non–PRC exporter. These suspension–of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States

is materially injured, or threatened with material injury, by reason of imports of lawn groomers, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline for submitting case briefs. *See* 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d)(1) and (2). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. *See* 19 CFR 351.309(c)(2) and 19 CFR 351.309(d)(2).

In accordance with section 774(a)(1) of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties that wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on December 18, 2008, and December 23, 2008, Princeway and Superpower, respectively, requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Princeway and Superpower agreed that the Department may extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4–month period to a 6–month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b)(2)(ii), we are granting the request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because: (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise (see Respondent Selection Memorandum), and (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–1721 Filed 1–28–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(C–570–931)

Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (the Department) has made a final determination that countervailable subsidies are being provided to producers and exporters of circular welded austenitic stainless pressure pipe (CWASPP) from the People's Republic of China (PRC). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: January 28, 2009.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, IA Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–2209.

SUPPLEMENTARY INFORMATION:

Petitioner

The petitioners in this investigation are Bristol Metals LLP, Felker Brothers Corp., Marcegaglia U.S.A., Inc., Outokumpu Stainless Pipe, Inc., and the United Steelworkers (petitioners).

Period of Investigation

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

Case History

On July 10, 2008, we published in the **Federal Register** the preliminary determination that countervailable subsidies are being provided to producers and exporters of CWASPP from the PRC, as provided under section 703 of the Tariff Act of 1930, as amended (the Act). *See Circular Welded Austenitic Stainless Pressure Pipe 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 39657 (July 10, 2008) (*Preliminary Determination*). On July 15, 2008, the Winner Companies filed timely allegations of significant ministerial errors contained in the Department's *Preliminary Determination*. After reviewing the allegations, we determined that the *Preliminary Determination* included significant ministerial errors as described under 19 CFR 351.224(g). Therefore, in accordance with 19 CFR 351.224(e), we made changes to the *Preliminary Determination*. On August 7, 2008, we published in the **Federal Register** the amended preliminary determination. *See Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Notice of Amended Preliminary Countervailing Duty Determination* 73 FR 45954 (August 7, 2008) (*Amended Preliminary Determination*).

On August 8, 2008, the GOC requested a hearing. On August 11, 2008, petitioners requested a hearing.

On December 16, 2008, we received case briefs regarding the *Preliminary Determination* from the Government of the People's Republic of China (GOC), petitioners, and Winner Stainless Tube Co., Ltd. (Winner), Winner Steel Products (Guangzhou)(WSP), and Winner Machinery Enterprise Company Limited (Winner HK) (collectively the Winner Companies). On December 17, 2008, the GOC filed a letter correcting inadvertent errors its case brief. On December, 22, 2008, the GOC, petitioners, and the Winner Companies submitted rebuttal briefs.