

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: Initiation of Countervailing Duty Investigation

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

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

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SUPPLEMENTARY INFORMATION:

The Petition

On June 24, 2008, the Department of Commerce (the Department) received a petition filed in proper form by Agri-Fab, Inc. (petitioner), domestic producers of certain tow-behind lawn groomers and certain parts thereof (lawn groomers) from the People's Republic of China (PRC). On June 27, 2008, the Department issued requests for additional information and clarification of certain areas of the petition involving general issues and the countervailable subsidy allegations. Based on the Department's request, petitioner timely filed additional information concerning the petition on July 2, 2008. On June 27 and July 7, 2008, the Department issued requests for additional information and clarification of certain areas of the petition. Based on the Department's requests, petitioner filed supplemental information on the following topics: general issues (i.e., scope, injury, and industry support) and scope on

July 9, 2008. In addition, petitioner provided an additional clarification of the scope of the Petition on July 10, 2009. See Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, “Request to Agri-Fab, Inc. via Telephone Conversation, July 10, 2008.” Petitioner also provided additional information on industry support on July 10, 2008. See Memorandum from Meredith A.W. Rutherford to the File, Petitions for the Imposition of Antidumping and Countervailing Duties – Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Phone Call with Petitioner Regarding Industry Support, dated July 9, 2008. Lastly, petitioner provided an additional clarification to the scope on July 11, 2008. See Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to the File, “Scope Clarification,” July 11, 2008.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), petitioner alleges that manufacturers, producers, or exporters of lawn groomers in the PRC received countervailable subsidies within the meaning of section 701 of the Act, and that imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and petitioner has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department to initiate (see infra, “Determination of Industry Support for the Petition”).

#### Period of Investigation

The anticipated period of investigation (POI) is calendar year 2007. See 19 CFR 351.204(b)(2).

### Scope of the Investigation

The merchandise covered by this investigation is certain lawn groomers and certain parts thereof. See Attachment I to this notice for a complete description of the merchandise covered by this investigation.

### Comments on Scope of the Investigation

During our review of the petition, we discussed the scope with petitioner to ensure that it is an accurate reflection of the merchandise for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (see Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by August 4, 2008, which is 21 calendar days from the date of signature of this notice.<sup>1</sup> Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, N.W., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

### Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the People's Republic of China (the GOC) for consultations with respect to the countervailing duty petition. The Department held these consultations on July 9, 2008. See Memorandum to the File, Petition on Certain Tow Behind Lawn Grooming Products and Certain Parts Therof from the People's Republic of China: Consultations with the Government of the

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<sup>1</sup> Twenty calendar days after the date of signature is Sunday, August 3, 2008.

People's Republic of China, July 11, 2008 and on file in the Central Records Unit (CRU), Room 1117 of the main Commerce Building.

Determination of Industry Support for the Petition

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

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information.

Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See USEC, Inc. v. United States, 132 F. Supp. 2d 1, 8 (CIT 2001), citing Algoma Steel Corp. Ltd. v. United States, 688 F. Supp. 639, 644 (CIT 1988), aff'd 865 F.2d 240 (Fed. Cir. 1989), cert. denied 492 U.S. 919 (1989).

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

With regard to the domestic like product, petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that certain tow behind lawn groomers and certain lawn groomer parts constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see Countervailing Duty Investigation Initiation Checklist: Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China (Initiation Checklist), Industry Support at Attachment II, on file in the CRU.

In determining whether petitioner has standing (i.e., those domestic workers and producers supporting the petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition), we considered the industry support data contained in the petition with reference to the domestic like product as defined in the “Scope of Investigation” section above. To establish

industry support, petitioner provided its sales volume of the domestic like product for calendar year 2007, and compared that to total sales volume of the domestic like product for the industry. Petitioner stated that it “used sales volumes . . . as a surrogate for production, because it does not have access to the actual production data of other domestic {lawn groomer} producers.” See Petition, Volume 1, at 2. We have relied upon data petitioner provided for purposes of measuring industry support. For further discussion, see Initiation Checklist at Attachment II (Analysis of Industry Support for the Petition).

The Department’s review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that petitioner has established industry support. First, the Petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (e.g., polling). See Section 702(c)(4)(D) of the Act. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(I) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. See Initiation Checklist at Attachment II (Analysis of Industry Support for the Petition).

The Department finds that petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department initiate. See Initiation Checklist at Attachment II (Analysis of Industry Support for the Petition).

#### Injury Test

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

#### Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of lawn groomers from the PRC are benefitting from countervailable subsidies and that such imports are causing or threaten to cause, material injury to the domestic industry producing lawn groomers. In addition, petitioner alleges that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

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

## Subsidy Allegations

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to petitioner supporting the allegations. The Department has examined the countervailing duty petition on certain lawn groomers and parts thereof from the PRC and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of certain lawn groomers and parts thereof from the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, see Initiation Checklist.

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

- A. National Preferential Income Tax Programs
  - 1. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program)
  - 2. Income Tax Reductions for Export-Oriented Enterprises
  - 3. Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export-Oriented Enterprise
- B. Value Added Tax (VAT) and Indirect Tax Programs at the National Level
  - 1. Income Tax Credits for FIEs Purchasing Domestically Produced Equipment
  - 2. Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies
  - 3. VAT refunds for FIEs Purchasing Domestically Produced Equipment

4. Import Tariff and VAT Exemptions for Encouraged Industries Importing Equipment for Domestic Operations
  5. Export Incentive Payments Characterized as “VAT Rebates”
- C. Provision of Hot-Rolled Steel at Less Than Adequate Remuneration
- D. Provincial and Local Income Tax Programs
1. Reduced Income Taxes Based on Geographic Location (Zhejiang and Shandong Provinces)
  2. Income Tax Preferential Programs for FIEs in Zhejiang Province
  3. VAT Refunds for Encouraged FIEs Purchasing Domestic Equipment in Zhejiang Province
  4. VAT and Import Tariff Rebates for Encouraged FIEs Purchasing Imported Equipment in Zhejiang Province
  5. Export-Based “Reward” Subsidies for Enterprises in Zhejiang Province
  6. Refunds of Legal Fees Paid in Antidumping and Countervailing Duty Investigations in Zhejiang Province and Jiashan County
  7. Income Tax Programs in Huimin Industrial Park in Zhejiang Province
  8. Export-Based “Reward” Subsidies for Enterprises in Huimin Industrial Park in Zhejiang Province
  9. VAT and Import Tariff Rebates for Encouraged FIEs Purchasing Imported Equipment in Huimin Industrial Park in Zhejiang Province
  10. Income Tax Programs in the Hangzhou Export Processing Zone in Zhejiang Province
  11. Export Incentive Payments in the Form of VAT Rebates for Companies Located in the Hangzhou Export Processing Zone in Zhejiang Province
- E. Preferential Policies and Benefits for Enterprises Located in Shandong Province
1. Provision of Land for Less Than Adequate Remuneration for Export-Oriented FIEs for Enterprises Located in Shandong Province
- F. Preferential Policies and Benefits in Qingdao Municipality

1. Income Tax Programs for FIEs Located in Qingdao Municipality
  2. Income Tax Offsets and/or Refunds for FIEs Purchasing Domestic Equipment in Qingdao Municipality
  3. VAT and Import Tariff Rebates for Encouraged FIEs Purchasing Imported Equipment in Qingdao Municipality
  4. Provision of Land for Less Than Adequate Remuneration for Export-Oriented FIEs Located in Qingdao Municipality
- G. Preferential Policies and Benefits for Enterprises Located in the Lingang Processing Industrial Zone in Qingdao Municipality
1. Income Tax Programs in the Lingang Processing Industrial Zone
  2. VAT and Import Tariff Rebates for Encouraged FIEs Purchasing Imported Equipment in the Lingang Processing Industrial Zone

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

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

1. Preferential Loans Pursuant to the Iron and Steel Policy
2. Preferential Lending Policies in Pursuant to Provincial Five-Year Plans (Shandong and Zhejiang Provinces)

For further explanation of the Department's decision not to investigate these programs, see Initiation Checklist.

#### Application of the Countervailing Duty Law to the PRC

The Department has treated the PRC as a non-market economy (NME) country in all past antidumping duty investigations and administrative reviews. 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, Finished and Unfinished, (TRBs) 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 from the People's Republic of China: Final Results of 2001-2002 Administrative Review, 68 FR 70488 (December 18, 2003). In the final affirmative countervailing duty determination on coated free sheet paper from the PRC, the Department determined that the current nature of the PRC economy does not create obstacles to applying the necessary criteria in the CVD law. See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007), and the accompanying Issues and Decision Memorandum at Comment 1; see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008) and accompanying Issues and Decision Memorandum at Comment 1. Therefore, because petitioner has provided sufficient information to support its allegations to meet the statutory criteria for initiating a countervailing duty investigation of certain tow behind lawn groomers and parts thereof from the PRC, initiation of a countervailing duty investigation is warranted in this case.

#### Respondent Selection

To determine the total and relative volume and value of import data for each potential respondent, the Department normally relies on Customs and Border Protection import data for the POI. However, in the instant proceeding, the Harmonized Tariff Schedule of the United States (HTSUS) categories that include subject merchandise are very broad, and include products other than products subject to this investigation. Further, imports of subject merchandise, as estimated by petitioner, account for only 3.8 percent by value of imports under the relevant

HTSUS categories. Therefore, because of the unique circumstances of this case, the Department will issue “Quantity and Value Questionnaires” to potential respondents for the purposes of respondent selection.

The Department requires that the respondents submit a response to the quantity and value questionnaire. See, e.g., Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Initiation of Antidumping Duty Investigation, 73 FR 10221, 10225 (February 26, 2008). This response must be submitted by all exporters/producers no later than July 28, 2008. The Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration’s website, at <http://ia.ita.doc.gov/ia-highlights-and-news.html>. The Department will send the quantity and value questionnaire to those PRC companies identified in the July 8, 2008, Supplement to the Petition, at Exhibit 2.

#### Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the GOC. To the extent practicable, we will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided under 19 CFR 351.203(c)(2).

#### ITC Notification

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

#### Preliminary Determination by the ITC

The ITC will preliminarily determine, by no later than August 8, 2008, whether there is reasonable indication that imports of subsidized certain tow behind lawn groomers and parts thereof from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry.

See Section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

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

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date

## **Appendix I**

### **Scope of the Countervailing Duty Investigation Lawn Groomers from the People's Republic of China**

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 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 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 order. 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.

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, 8432.90.0030, 8432.90.0080, 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 petition.