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: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines 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 subsidy rates, see the ''Suspension of Liquidation'' section of this notice. This notice also serves to align the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty investigation of lawn groomers from the PRC.

EFFECTIVE DATE: November 24, 2008.

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:

Case History

The following events have occurred since the publication of the Department's notice of initiation in the **Federal Register**. *See Certain Tow–Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 73 FR 42324 (July 21, 2008) (*Initiation Notice*).

On August 14, 2008, the Department selected as mandatory respondents the two largest Chinese producers/exporters of lawn groomers that could reasonably be examined, Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited (collectively, Princeway) and Jiashan Superpower Tools Co., Ltd. (Superpower). *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, ''Selection of Respondents for the Countervailing Duty Investigation of Certain Tow–Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China'' (August 14, 2008) (Respondent Selection Memorandum). A public version of this memorandum is on file in the Department's Central Records Unit (CRU) in Room 1117 of the main Department building. On August 18, 2008, we issued the CVD questionnaire to the Government of the People's Republic of China (GOC), requesting that the GOC forward the company sections of the questionnaire to the mandatory respondent companies.

On August 21, 2008, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of lawn groomers from China. *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).

On August 26, 2008, we published a postponement of the preliminary determination of this investigation until November 17, 2008. *See Certain Tow–Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 73 FR 50307 (August 26, 2008). We received responses from the GOC and both mandatory respondent companies on October 8, 2008. We issued supplemental questionnaires to Princeway and Superpower on October 24, 2008, and to the GOC on October 29, 2008. Complete responses to these questionnaires are due November 18, 2008.

On August 20, 2008, Agri–Fab, Inc. (Petitioner) submitted new subsidy allegations regarding eight programs. On September 11, 2008, the GOC submitted comments on these allegations. On October 8, 2008, the Department determined to investigate all of these newly alleged subsidy programs pursuant to section 775 of the Tariff Act of 1930, as amended (the Act). *See* Memorandum to Barbara E. Tillman, Director AD/CVD Operations, Office 6, ''Countervailing Duty Investigation of Certain Tow–Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China (PRC): Initiation Analysis of New Subsidy Allegations'' (October 8, 2008). Questions regarding these newly alleged subsidies were sent to the GOC and the mandatory respondent companies on October 10, 2008. The GOC, Princeway, and Superpower submitted responses to the new subsidy allegations questionnaires on October 27, 2008.

Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

On July 21, 2008, the Department initiated the CVD and antidumping duty investigations of lawn groomers from the PRC. *See Initiation Notice* and *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). The CVD investigation and the antidumping duty investigation have the same scope with regard to the merchandise covered.

On August 8, 2008, Petitioner submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final antidumping duty determination of lawn groomers from the PRC. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final antidumping duty determination. Consequently, the final CVD determination will be issued on the same date as the final antidumping duty determination, which is currently scheduled to be issued no later than April 6, 2009,[1] unless postponed.

Scope Comments

As explained in the preamble to the Department's regulations, we set aside a period of time in the *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 21 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997); and *Initiation Notice*, 73 FR at 42324. No such comments were filed on the record of either this investigation or the companion antidumping duty investigation.

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

[1] The calculated signature date is April 5, 2009, a Saturday. The next business day is April 6, 2009.

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.

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.

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and the accompanying Issues and Decision Memorandum (CFS Decision Memorandum). In *CFS from the PRC*, the Department found that, ''given the substantial differences between the Soviet–style economies and the PRC's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet–style economies does not act as a bar to proceeding with a CVD investigation involving products from the {PRC}.'' *See* CFS Decision Memorandum, at Comments 1 and 6.

The Department has subsequently affirmed its decision to apply the CVD law to the PRC in several final determinations, most recently in *Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*LWTP from the PRC*), and the accompanying Issues and Decision Memorandum (LWTP Decision Memorandum).

Additionally, for the reasons stated in the LWTP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization, as the date from which the Department will identify and measure subsidies in the PRC for purposes of this preliminary determination. *See* LWTP Decision Memorandum, at Comment 2.

Subsidies Valuation Information

Allocation Period

The average useful life (AUL) period in this proceeding as described in 19 CFR 351.524(d)(2) is 10 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture lawn groomers. No party in this proceeding has disputed this allocation period.

Denominator and Attribution of Subsidies

When selecting an appropriate denominator for use in calculating the *ad valorem* countervailable subsidy rate, the Department considered the bases for Princeway's and Superpower's approval of benefits under each program at issue. For export related subsidies, the Department attributed the subsidies only to products exported by the respondents and used export sales as the denominator. *See* 19 CFR 351.525(b)(2). For all other non–export related subsidies, the Department has attributed these subsidies to the total sales of all products of Princeway and Superpower and used total sales as the denominator in our calculations. *See* 19 CFR 351.525(b)(3).

Princeway Furniture (Dong Guan) Co., Ltd. is owned by and sells through its affiliate Princeway Limited for tax and currency control purposes. Princeway's production facility is located in Guangdong Province; therefore, we are relying on the sales figures recorded in the income statements of Princeway Furniture (Dong Guan) Co., Ltd. as denominators. *See* 19 CFR 351.525(b)(6)(i). Moreover, Princeway has not provided a justification for using any other sales figures as denominators such as the Department examined in our investigation of coated free sheet paper from the PRC. *See* CFS Decision Memorandum, at Comment 23. Superpower reported that it had no cross–owned affiliates that received subsidies and no affiliates involved in its sales transactions; therefore, we are using Superpower's sales figures as denominators. *Id.*

Discount Rate for Allocation

Consistent with 19 CFR 351.524(3)(i)(A), we used as our discount rate a long–term interest rate calculated according to the methodology that we used recently in our thermal paper investigation for the year in which the government agreed to provide the benefit. *See* LWTP Decision Memorandum, at Comments 8 and 9. The rates reported in International Financial Statistics represent short- and medium–term lending. However, there are no sufficient publicly–available long–term interest rate data upon which to base a robust benchmark for long–term loans. To address this problem, the Department developed an adjustment to medium–term rates to convert them to long–term rates using Bloomberg U.S. corporate BB–rated bond rates. *See id.*, at Comment 9. Because the short–term benchmark covers loans up to two years, we have calculated the long–term adjustment based on the difference between (1) the two–year BB–rated bond rate and (2) the 10–year BB–rated bond rate because 10 years is the AUL in this case. *See*, *also*, Memorandum to the File, ''Preliminary Calculation Memorandum for Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited'' (November 17, 2008) for a more detailed discussion of the discount rate methodology.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Non–Cooperative Companies

In the instant investigation, the following five companies 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–cooperative companies). We attempted twice to solicit quantity and value information from the first four of these companies, and confirmed delivery of our questionnaires through Federal Express. In our second attempt, we warned that ''{f}ailure to respond to this questionnaire may result in the Department determining that your company has decided not to participate in this proceeding and that your company has not cooperated to the best of its ability. As a consequence, the Department would consider applying facts available with an adverse inference in accordance with section 776(b) of the Tariff Act of 1930.'' *See* Letters to Hangzhou Geesun International Co., Ltd., *et al.*, from Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Quantity and Value Questionnaire for the Countervailing Duty Investigation of Certain Tow–Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China'' (August 4, 2008). World Factory Inc. refused delivery of our first questionnaire. *See* Respondent Selection Memorandum for the details of our attempts to solicit information from 12 producers and exporters identified in the petition.

In the instant investigation, the non–cooperative companies withheld requested information and significantly impeded this proceeding. Specifically, by not responding to requests for information concerning the quantity and value of their sales, they impeded the Department's ability to select the most appropriate respondents in this investigation. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have based the CVD rate for the non–cooperative companies on facts otherwise available.

We also determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to the Department's quantity and value questionnaires, these companies did not cooperate to the best of their ability in this investigation. Accordingly, we find that an adverse inference is warranted to ensure that the non–cooperating companies will not obtain a more favorable result than had they fully complied with our request for information.

In deciding which facts to use as adverse facts available (AFA), section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding. *See*, *e.g.*, *Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*LWS from the PRC*) and the accompanying Issues and Decision Memorandum (LWS Decision Memorandum) at ''Selection of the Adverse Facts Available''.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin 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*, *e.g.*, *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). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. I, at 870 (1994). In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

For the preliminary determination, consistent with the Department's recent practice, we are computing a total AFA rate for the non–cooperating companies generally using program–specific rates determined for the cooperating respondents or past cases. Specifically, for programs other than those involving income tax exemptions and reductions, we will apply the highest calculated rate for the identical program in this investigation if a responding company used the identical program. If there is no identical program match within the investigation, we will use the highest non–*de minimis* rate calculated for the same or similar program in another PRC CVD investigation. Absent an above–*de minimis* subsidy rate calculated for the same or similar program, we will apply the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non–cooperating companies. *See*, *e.g.*, LWTP Decision Memorandum, at Comment 3.

Also, as explained in the *Initiation Notice*, and accompanying Initiation Checklist, where the GOC can demonstrate through complete, verifiable, positive evidence that non–cooperative companies (including all their facilities and cross–owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department will not include those provincial programs in determining the countervailable subsidy rate for the non–cooperative companies. In this investigation, the GOC did not provide any such information. Therefore, the Department included all provincial programs in determining the countervailable subsidy rate for the non–cooperative companies.

Foreign–Invested Enterprise (FIE) Income Tax Rate Reduction and Exemption Programs

For the 11 income tax rate reduction or exemption programs,[2] we have applied an adverse inference that the non–cooperative companies paid no income taxes during the POI. Information from the petition indicates that during the POI, the standard income tax rate for corporations was 30 percent; there was an additional local income tax of 3 percent. *See* Petitioner's June 24, 2008 Submission, at Exhibit II–21. Therefore, the highest possible benefit for all income tax reduction or exemption programs combined is 33 percent. Thus, we are applying a countervailable rate of 33 percent on an overall basis for these 11 income tax programs (*i.e.*, these 11 income tax programs combined to provide a countervailable benefit of 33 percent). This 33 percent AFA rate does not apply to tax credit or tax refund programs. *See*, *e.g.*, CFS Decision Memorandum, at 3; *see*, *also*, LWTP Decision Memorandum, at Comment 3.

Income Tax Credit and Refund Programs

For the ''Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export–Oriented Enterprise'' program, a tax refund program, we have preliminarily determined to apply the rate calculated for Superpower under the same program in this investigation, which is 0.64 percent. Neither of the two mandatory respondents used the three remaining income tax credit and refund programs,[3] and the Department has not calculated a non–de minimis rate for any of these programs in any prior investigation. Therefore, for each of these three tax credit and refund programs, we have preliminarily determined to apply the highest non–*de minimis* rate for any indirect tax program from a PRC CVD investigation because, after examining each PRC CVD final determination, there were only *de minimis* rates for income tax credit or refund programs from prior investigations. The rate we selected for these programs is 1.51 percent, the rate calculated for respondent Gold East Paper (Jiangsu) Co., Ltd. (GE) for the ''VAT and Tariff Exemptions on Imported Equipment'' program in *CFS from the PRC*. *See* CFS Decision Memorandum, at 13–14.

Value Added Tax (VAT) and Tariff Exemptions and Rebates for Equipment Programs

For the ''VAT and Import Tariff Exemption for Imported Equipment'' program, we have preliminarily determined to apply the rate calculated for Princeway under this program in this investigation, which is 0.49 percent.[4] Neither of the two mandatory respondents used the ''VAT Exemption for Domestically Produced Equipment'' program. Therefore, for this program, we have preliminarily determined to apply the highest non–*de minimis* rate for the identical program from *CFS from the PRC*: 1.51 percent, GE's calculated rate for the program ''VAT and Tariff Exemptions on Imported Equipment.'' *See id*.

Export Promotion Programs

Neither of the mandatory respondents used the ''Export–Based Reward' Programs for Enterprises in Zhejiang Province'' program, the ''Refunds of Legal Fees Paid in Antidumping and Countervailing Duty Investigation in Zhejiang Province and Jiashan County'' program, the ''Export–Based Reward' Subsidies for Enterprises in Huimin Industrial Park'' program, or the ''Funds for Outward Expansion' of Industries in Guangdong Province'' program. The Department has not calculated a non–*de minimis* rate for any similar program in any prior investigation. Therefore, for these four programs, we have preliminarily determined to apply the highest calculated subsidy rate for any program otherwise listed that could conceivably have been used by the non–cooperating companies: 44.91 percent,

[2] ''Two Free, Three Half'' Tax Exemption for FIEs; Income Tax Reductions for Export-Oriented Enterprises; Reduced Income Taxes Based on Geographic Location - Zhejiang and Shandong Provinces; Income Tax Programs for FIEs in Zhejiang Province; Income Tax Programs in the Huimin Industrial Park in Zhejiang Province; Income Tax Programs in the Hangzhou Export Processing Zone in Zhejiang Province; Income Tax Programs for FIEs Located in Qingdao Municipality; Income Tax Programs in the Lingang Processing Industrial Zone in Qingdao Municipality; Income Tax Programs for FIEs in Guangdong Province; Income Tax Programs for FIEs in Dongguan City, Guangdong Province; and Income Tax Programs for Export-Oriented FIEs in Dongguan City, Guangdong Province.

[3] Income Tax Credits for FIEs Purchasing Domestically Produced Equipment; Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically-Owned Companies; and Income Tax Offsets and/or Refunds for FIEs Purchasing Domestic Equipment in Qingdao Municipality.

[4] As discussed below under ''Programs Preliminarily Determined To Be Not Used by Princeway and Superpower,'' the Department has preliminarily determined that there are only two VAT exemptions and rebates for equipment programs under investigation.

the rate calculated for Kingland for the ''Provision of Hot–Rolled Steel at Less than Adequate Remuneration'' program in the investigation of circular welded carbon quality steel pipe. *See* Memorandum to Susan Kuhbach, Director, Office 1, AD/CVD Operations, ''Countervailing Duty Investigation: Circular Welded Carbon–Quality Steel Pipe from the People's Republic of China: Ministerial Error Allegation,'' (July 2, 2008) at 7.

In addition, neither of the two mandatory respondents used the program ''Preferential Loans and Development Funds' for Export–Oriented Enterprises in Guangdong Province,'' and the Department has not calculated a non–*de minimis* rate for this program in any other PRC CVD investigation. Therefore, we have preliminarily determined to apply the highest non–*de minimis* rate for a loan program from a PRC CVD investigation: 7.99 percent, the rate calculated for Guangdong Guanhao High–Tech Co., Ltd. for the program ''Government Policy Lending'' in *LWTP from the PRC*. *See* LWTP Decision Memorandum, at 11–12.

Provision of Land at Less Than Adequate Remuneration (LTAR) Programs

Finally, neither of the mandatory respondents used the ''Provision of Land for LTAR for Export–Oriented FIEs Located in Shandong Province'' program, or the ''Provision of Land for LTAR for Export–Oriented FIEs Located in Qingdao Municipality'' program. Therefore, for these two programs, we have preliminarily determined to apply the highest non–*de minimis* rate for a similar land at LTAR program from a PRC CVD investigation: 13.36 percent, the rate calculated for Zibo Aifudi Plastic Packaging Company Limited in *LWS from the PRC*. *See* LWS Decision Memorandum, at 14–18.

Allegations Not Affecting the AFA Rate

As discussed below, we have preliminarily determined that we require more information regarding the ''Provision of Hot–Rolled Steel at Less Than Adequate Remuneration'' program and the ''VAT Export Rebate'' program.[5] Also as discussed below, we have preliminarily determined that producers and exporters of lawn groomers are ineligible for benefits under programs related to consumption taxes. Therefore, these programs are not reflected in the calculation of our AFA rate.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See*, *e.g.*, SAA, at 870. It is the Department's practice to consider information to be corroborated if it has probative value. *Id*. Further, it is also the Department's practice to corroborate secondary information, the Department will, to the extent practicable, by examining the reliability and relevance of the information to be used. *See*, *e.g.*, SAA, at 869. However, it is also our practice that we need not prove that the selected facts available are the best alternative information.

When the Department applies AFA, to the extent practicable, it will determine whether such information has probative value by evaluating the reliability and relevance of the information used. With regard to the reliability aspect of corroboration, we note that these rates were calculated in prior final CVD determinations. No information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company–specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it. *See*, *e.g.*, *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996).

The Department has reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program–type match, we find that programs of the same type are relevant to the programs of this case. For the programs for which there is no program–type match, the Department has selected the highest calculated subsidy rate for any PRC program from which the non–cooperating companies could conceivably receive a benefit to use as AFA. The relevance of this rate is that it is an actual calculated CVD rate for a PRC program from which the non–cooperating companies could actually receive a benefit. The Department has corroborated the rates it selected to the extent practicable.

On this basis, we preliminarily determine that the AFA countervailable subsidy rate for the five non–cooperating companies is 254.52 percent *ad valorem*.

Application of ''All Others'' Rate to Companies Not Selected as Mandatory Respondents

In addition to Princeway and Superpower, the Department received responses to its quantity and value questionnaire from the following four companies: Hangzhou Geesun International Co., Ltd., Nantong D&B Machinery Co., Ltd., Qingdao Huatian Hand Truck Co., Ltd., and T.N. International, Inc. *See* Respondent Selection Memorandum. However, the Department was unable to deliver the quantity and value questionnaire to Sidepin Ltd., another of the twelve producers and exporters listed in the petition, because of an address error. *Id*. While these five companies were not chosen as mandatory respondents, because they cooperated fully with the Department's request for quantity and value information regarding their sales, or, in the case of Sidepin Ltd., were not uncooperative, we are applying the all others rate to these five companies.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined to Be Countervailable

A. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program)

Petitioner alleges that under Article 8 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* (*FIE Tax Law*), FIEs of a ''productive nature'' that are scheduled to operate for not less than 10 years may be exempt from income taxes during the first two years of profitability, and may pay half of the applicable tax for the next three years.

[5] As discussed below under ''Programs Preliminarily Determined To Be Not Used by Princeway and Superpower,'' the Department has preliminarily determined that there is only one VAT export rebates program under investigation.

Princeway states it received benefits under this program during the POI. Specifically, it paid no tax in 2006 pursuant to Article 8 of the *FIE Tax Law* as reflected in the tax return it filed during the POI, which it submitted as an attachment to its questionnaire response.

According to Superpower's response, it also qualified for benefits under this program during the POI. Specifically, Superpower qualified for ''three half'' benefits during tax year 2006, reflected in the tax return it filed during the POI. Therefore, during tax year 2006, Superpower's central government income tax rate was reduced from 24 percent to 12 percent, and its local income tax rate was reduced from 2.4 percent to 1.2 percent.[6]

We preliminarily determine that the income tax exemptions received by Princeway and Superpower under this program confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings. *See* Section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemptions afforded by this program are limited as a matter of law to certain enterprises, ''productive'' FIEs, and, hence, are specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Princeway and Superpower as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided each company's tax savings received during the POI by its total sales during that period. To compute the amount of the tax savings, we compared the income tax rate Princeway and Superpower would have paid in the absence of the program with the income tax rate the companies actually paid. On this basis, we preliminarily determine that Princeway received a countervailable subsidy of 0.46 percent *ad valorem* under this program and Superpower received a countervailable subsidy of 1.32 percent.

Finally, we address Superpower's arguments that any tax benefits it received pursuant to activities taking place before the POI (2007) are not germane to this investigation. Primarily, in its discussion of this program and others, Superpower argues that it submits quarterly tax returns to local authorities. Three of the quarterly ''returns'' for tax year 2007 activity were filed in 2007, with the fourth filed in 2008. According to Superpower, these quarterly documents are a more accurate measure of benefits received in the POI than the Department's practice of calculating benefits using the annual tax return filed in the POI, which reflects activity for the prior year. Superpower also argues that exemptions and rebates (discussed below) it has received should be attributable to the year in which it accrued the right to these exemptions and rebates.

The Department, however, is maintaining its practice of calculating benefits for the POI using the tax return filed in the POI. *See* 19 CFR 351.509(b)(1). According to the GOC, ''income taxes are paid in quarterly installments,'' but ''{w}ithin four months of the end of the year, an annual tax return form and final accounting statements must be submitted and tax accounts are finally settled within five months of the end of the year.'' *See* GOC's October 8, 2008 Questionnaire Response, at I–12. Thus, while benefits reflected on Superpower's 2007 tax return are attributable to activity in 2006, these benefits do not become final until 2007 (the POI). Likewise, as discussed below, rebates received by Superpower, which are not reflected in any of its tax returns, while attributable to activity before 2007, were applied for, approved, and paid in 2007.

B. Income Tax Reductions for Export–Oriented Enterprises (EOEs)

Petitioner alleges Article 75 of the *Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises an Foreign Enterprises* (*FIE Tax Rules*) provides that FIEs that export 70 percent or more of the total value of their products may benefit from reduced tax rates. According to Petitioner, income tax rates for enterprises participating in this program may be reduced by 50 percent.

Superpower states that it received benefits under this program for tax year 2006. Specifically, according to Superpower, it qualified for a 50 percent reduction in its central tax rate and a 100 percent reduction in its local tax rate. Because it had already received a 50 percent reduction in its central tax rate pursuant to the ''Two Free, Three Half'' program, only the 100 percent reduction of the local tax rate provided additional benefits. These benefits were provided in the form of a rebate of the remaining 1.2 percent local income tax, which Superpower applied for and received in the POI.

We preliminarily determine that the income tax rebate received by Superpower under this program confers a countervailable subsidy. The rebate is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See* Section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

Superpower states that in order to receive this rebate it had to obtain ''the Certification of Export–oriented FIE.'' *See* Superpower's October 8, 2008 Questionnaire Response, at 19. Likewise, the GOC explains how benefits under this program are contingent on a demonstration by an FIE that its export sales amount to 70 percent of its total sales. *See* GOC's October 8, 2008 Questionnaire Response, at I–19. Therefore, we preliminarily determine that the rebate afforded by this program is contingent on Superpower's export performance and, hence, is specific under section 771(5A)(B) of the Act.

To calculate the benefit, we treated the income tax rebate enjoyed by Superpower as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the rebate received during the POI by the company's total export sales during that period. On this basis, we preliminarily determine that Superpower received a countervailable subsidy of 0.15 percent *ad valorem* under this program.

C. Refund of Enterprise Income Taxes on FIE Profits Reinvested in an EOE

Petitioner alleges that export–oriented FIEs are eligible for tax refunds on profits that are reinvested in the FIE, or into a new high–technology enterprise or EOE.

According to Superpower's response, it received two payments under this program in 2007. While the payments arise from profits made during tax years 2005 and 2006, Superpower applied for the rebates in 2007. Moreover, the rebates were approved and the rebate funds were paid to Superpower in 2007. According to Superpower, ''the amount of assistance provided was determined by the amount of the reinvested profit and the amount of income tax already paid for this amount of reinvested profit.'' *See* Superpower's October 8, 2008 Questionnaire Response, at 22. Likewise, according to the GOC, the refund amount depends on the ''original applicable enterprise income tax rate,'' which, according to the *FIE Tax Rules*, would appear to be the effective rate (*i.e.*, the standard 30 percent rate minus

[6] Superpower's eligibility for a 24 percent central rate, instead of the standard 30 percent rate, and a 2.4 percent local rate, instead of the standard 3 percent rate, is discussed below under the ''Reduced Income Taxes Based on Geographic Location (Zhejiang and Shandong Provinces)'' section.

FIE reductions, *etc.*) applied to the enterprise in question in the year the profit was made (in this case, 2005 and 2006). *See* GOC's October 8, 2008 Questionnaire Response, at I–24.

Moreover, according to the GOC, while ''the program is available to all qualifying FIEs,'' the amount of the refund is larger for reinvestments in EOEs. *Id.* Specifically, a standard FIE receives 40 percent of the refund received by an EOE. *Id.* The documents provided by Superpower (applications, approvals, *etc.*) are consistent with the formulas stated by the GOC and included in the *FIE Tax Rules.* It also notes that ''{t}he FIE, not the investor, applies for and receives the refund, of income taxes paid by the FIE, which it may pay to the investor.'' *Id.* at I–28.

We preliminarily determine that the rebates received by Superpower under this program confer a countervailable subsidy. The rebates are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings. See Section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

As noted above, the GOC's response explains that larger rebates are provided to EOEs than to other FIEs. Based on our examination of the application and approval documents submitted by Superpower, we have determined that one of the two rebates received by Superpower during the POI was pursuant to the EOE formula and one was pursuant to the standard FIE formula. Therefore, we preliminarily determine that one of the rebates afforded by this program is contingent on Superpower's export performance and, hence, is specific under section 771(5A)(B) of the Act. The other rebate is limited as a matter of law to certain enterprises (FIEs) and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax rebates enjoyed by Superpower as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided one rebate by total export sales and the other by total sales during the POI. On this basis, we preliminarily determine that Superpower received a countervailable subsidy of 0.64 percent *ad valorem* under this program.

D. Import Tariff and VAT Exemptions for Encouraged Industries Importing Equipment for Domestic Operations

Petitioner alleges that the GOC administers a program that offers VAT and import tariff rebates on imported equipment. According to Petitioner, this program is available to both FIEs and domestic enterprises, and its purpose is to encourage foreign investment and introduce foreign advanced technology equipment and industry technology upgrades.

According to Princeway, it received benefits under this program for imported equipment because it ''was established as an export–oriented enterprise to export all of its products to overseas markets. This status of the company falls within the category of encouragement under the Catalog of Industries Guidance for Foreign Business Investment . . . .'' Consequently, it received an exemption from customs duties and VAT on imported equipment.

We preliminarily determine that the exemption received by Princeway under this program confers a countervailable subsidy. The exemption is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the VAT and tariff savings. *See* Section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

As noted above, Princeway qualified for this exemption because it ''was established as an export–oriented enterprise to export all of its products to overseas markets.'' Therefore, we determine the VAT and tariff exemption under this program is contingent on Princeway's export performance and, hence, is specific under section 771(5A)(B) of the Act.

Normally, we treat exemptions from indirect taxes and import charges, such as VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non–recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

We requested that Princeway identify the equipment for which it received a VAT and tariff exemption from 2001 through the end of the POI. In some of these years, the total amount of the VAT and tariff exemption approved was less than 0.5 percent of Princeway's export sales for those years. *See* 19 CFR 351.524(b)(2). For those years, therefore, we do not reach the issue of whether the VAT and tariff exemption was tied to the capital structure or capital assets of the firm. Instead, we expense the benefit to the year in which it is received, consistent with 19 CFR 351.524(a).

In some other years, however, the total amount of VAT and tariff exemption exceeded 0.5 percent of Princeway's export sales for those years. Based on Princeway's reported information, the VAT and tariff exemption were for capital equipment. *See* Princeway's October 8, 2008 Questionnaire Response, at Exhibit 14. Accordingly, the Department is treating the VAT and tariff exemption for those years as a non–recurring benefit consistent with 19 CFR 351.524(c)(2)(iii).

To calculate the benefit for Princeway, we used our standard methodology for non–recurring benefits (*see* 19 CFR 351.524(b)) and recurring benefits, as applicable (*i.e.*, for the years for which we determined the benefits to be non–recurring, we first allocated the benefits to the POI). We then summed these allocated benefits from Princeway's VAT and tariff exemptions from years 2002 to 2007. On this basis, we preliminarily determine that Princeway received a countervailable subsidy of 0.49 percent *ad valorem* under this program.

E. Reduced Income Taxes Based on Geographic Location (Zhejiang and Shandong Provinces)

Petitioner alleges that special economic zones (SEZs) exist in the PRC to encourage foreign investment and the development of industry. According to Petitioner, these SEZs may be designated as coastal economic development zones, SEZs, or as economic and technical development zones. Petitioner claims that benefits received by the industries operating in these SEZs include, *inter alia*, preferential income tax rates.

Superpower states that it is eligible for reduced income tax rates as it is located in Jiashan, a coastal economic development zone. Specifically, under Article 7 of the *FIE Tax Law*, it is eligible for a central government tax rate of 24 percent and, apparently under the discretion afforded to provincial and municipal governments by Article 9 of the *FIE Tax Law*, it is eligible for a local tax rate of 2.4 percent, because of its location in a coastal economic development zone. These reduced tax rates are reflected in the tax return Superpower filed in 2007.

We preliminarily determine that the income tax exemption received by Superpower under this program confers a countervailable subsidy. The exemption is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See* Section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that the exemption afforded by this program is

limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Superpower as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by its total sales during that period. To compute the amount of the tax savings, we compared the income tax rate Superpower would have paid in the absence of the program with the income tax rate the company actually paid. On this basis, we preliminarily determine that Superpower received a countervailable subsidy of 0.66 percent *ad valorem* under this program.

F. Income Tax Programs for FIEs in Dongguan City in Guangdong Province

Petitioner alleges that the government of Guangdong province provides income tax incentives to FIEs operating within the province. According to Petitioner, productive FIEs operating for at least 10 years may take advantage of a ''Two Free, Three Half'' program similar to that operated by the central government. Petitioner also claims that ''export–oriented'' FIEs that export 70 percent or more of their produced goods may qualify for a reduced income tax rate once the ''Two Free, Three Half'' period has expired. Petitioner further claims that export–oriented FIEs operating in SEZs within Guangdong province may qualify for a further reduced income tax rate of 10 percent. Further, Petitioner states that an FIE may receive an income tax refund ranging from 40 to 100 percent when its profits are either reinvested into the enterprise, or reinvested in an export–oriented FIE.

According to Princeway, it is entitled to a 24 percent central government tax rate, reduced from the standard central tax rate of 30 percent, because it is located in Dongguan, a coastal economic development zone. We preliminarily determine that the income tax exemption received by Princeway under this program confers a countervailable subsidy. The exemption is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See* Section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that the exemption afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act. However, as Princeway is already exempted from all taxes as part of the ''Two Free, Three Half'' program discussed above, no additional benefits are provided from Princeway's eligibility for a reduced rate under this program.

II. Programs for Which We Preliminarily Determine More Information is Needed

A. Provision of Hot–Rolled Steel at Less Than Adequate Remuneration

Petitioner alleges that hot–rolled steel is the primary input into the subject merchandise and many producers of subject merchandise purchase hot–rolled steel directly and handle both the processing and assembly operations to manufacture law grooming products thereof. Petitioner claims that Chinese producers have benefited by obtaining steel from GOC–owned or controlled steel producers at artificially low prices. Petitioner argues that the GOC's control over the steel industry allows it to distribute steel at favorable prices to industries producing higher–value-added products that drive its export–focused economy, which, Petitioner continues, lowers the cost of production for Chinese producers of subject merchandise.

Both Princeway and Superpower reported purchasing hot–rolled steel during the POI. According to Princeway, all of the hot–rolled steel it purchased during the POI was produced in Taiwan. The Department has requested documentation supporting this claim. According to Superpower, all of the hot–rolled steel it purchased during the POI was produced by privately held companies. The Department has requested additional documentation concerning this claim as well and will consider this issue further for the final determination.

B. Export Incentive Payments Characterized as ''VAT Rebates''

Petitioner alleges that the GOC has a program in which producers and exporters of subject merchandise may receive rebates of VAT fees on exported goods. Petitioner claims that taxpayers pay no VAT on exported goods, and they are entitled to refunds on any VAT paid on inputs purchased and used to produce exported goods.

Both Princeway and Superpower state they were entitled to export rebates. Moreover, Princeway also states it paid no VAT on imported inputs used in the production of exported goods. Depending on our analysis of responses to supplemental questionnaires due after the issuance of this notice, we may request additional information concerning whether the GOC's export rebate calculation takes into consideration the fact that VAT is often not paid on the inputs used in producing the exported goods. Likewise, we may have similar questions concerning whether the ''cap'' the GOC calculates to prevent excessive rebates takes into consideration the fact that VAT is often not paid on such inputs.

III. Program for Which We Preliminarily Determine Producers and Exporters of Lawn Groomers To Be Ineligible

Consumption Tax and VAT Exemptions for Processing and Assembling Goods for Export, and for Related Processing Costs

Petitioner states that the consumption tax in the PRC is levied at the rate of three to 17 percent, depending on the good, and is applied to all products purchased in the production processing of goods for export. According to information submitted by Petitioner, companies located in the municipality of Dongguan that process and assemble goods for export, are exempt from paying the VAT and consumption tax on these goods.

According to the GOC, as a general matter, the consumption tax is levied on goods that the state does not encourage the consumers to use, such as luxury goods, cigarettes, alcohol, *etc.* Furthermore, the GOC explained that payers of this tax are enterprises or individuals that produce or import these goods. The GOC also provided State Council regulations concerning the consumption tax, including a list of taxed products. The document confirms the GOC's statements concerning the types of goods subject to the consumption tax. Therefore, we preliminarily determine that producers and exporters of lawn groomers are not subject to a consumption tax as they are not producers of the taxed goods and, thus, that they are not eligible to benefit from any reduced rates for consumption taxes.

IV. Programs Preliminarily Determined To Be Not Used by Princeway and Superpower

We preliminarily determine that Princeway and Superpower did not apply for or receive benefits during the POI under the programs listed below. We note that the GOC submitted information in its October 27, 2008 supplemental questionnaire response supporting its claims that many local and provincial programs the Department is investigating are actually part of central programs being investigated. The GOC has made such claims regarding several income tax, VAT, and import tariff programs. We do not believe it is necessary to address these arguments

and supporting information regarding income tax programs. The Department's AFA methodology, as discussed above, relies on a flat 33 percent figure for use as AFA for income tax programs. Thus, the number of income tax programs does not affect the AFA rate, and will have no other affect on the results of this investigation. Regarding the GOC's claims and supporting information addressing the number of VAT and import tariff programs, we preliminarily agree with the GOC. There are three such programs under investigation: 1) ''Import Tariff and VAT Exemptions for Encouraged Industries Importing Equipment for Domestic Operations,'' established by the *Circular of the State Council on Adjusting Tax Policies on Imported Equipment* (Guofa (1997) No. 37), and used by Princeway and addressed above; 2) ''VAT Refunds for FIEs Purchasing Domestically Produced Equipment,'' regulated by the *Circular on Trial Administrative Measures on Purchase of Domestically Produced Equipment by Projects with Foreign Investment* (Guoshuifa (2006) No. 111), and not used by either Princeway or Superpower and listed below; and 3) ''Export Incentive Payments Characterized as VAT Rebates,''' sometimes referred to in previous investigations simply as ''VAT Export Rebates,'' regulated by the *Provisional VAT Rules of China* (Decree 134 of the State Council, 1993), for which we are gathering more information as discussed above.

We preliminarily determine that the GOC provided adequate information demonstrating that local and provincial governments do not have the authority to regulate the collection of VAT or import tariffs, beyond their involvement in local level administration. For example, according to the *Notice of the State Council of Taxation on Adhering to Administering Tax by Law and Strictly Administering the Reduction and Exemption of Taxes*, Exhibit N–A.2 of the GOC's October 27, 2008 Questionnaire Response, ''The legislative powers in respect of national taxes, shared taxes and local taxes shall be centralized by the central authorities. Each locality . . . should not institute or interpret tax policies beyond their powers, neither they may exceed their terms of reference to grant tax reduction and exemption, nor allow deferment of tax payment, nor exempt somebody from taxes that have been overdue.'' In addition, the *Implementation Opinion on Establishing Direct Tax Authorities at Local Level and Local Tax Bureau*, Exhibit N–B.2 of the GOC's October 27, 2008 Questionnaire Response, states that the State Taxation Bureau system is responsible for the levy and management of VAT. Finally, the *Customs Law of the People's Republic of China*, Exhibit N–B.3 of the GOC's October 27, 2008 Questionnaire Response, states that ''Customs duties for import or export goods in special areas, for special enterprises and for special purposes may be reduced or exempted. The State Council shall formulate detailed regulations about the scope and method of the reduction or exemption.'' Given this information the following list of programs not used has been consolidated by removing what we have preliminarily determined to be redundant VAT and import tariff allegations. *See*, *also*, Memorandum to File, ''Preliminary Adverse Facts Available Calculation for Lawn Groomers'' (November 17, 2008). We will explore this issue further through supplemental questionnaires issued after this preliminary determination and during verification. We will also consider information Petitioner might place on the record to rebut the GOC's claims. We have also removed from the list below the allegation regarding consumption tax, because, as discussed above, we have preliminarily determined producers and exporters of lawn groomers would not be eligible for benefits under this allegation.

A. Income Tax Credits for FIEs Purchasing Domestically Produced Equipment
B. Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies
C. VAT refunds for FIEs Purchasing Domestically Produced Equipment
D. Export–Based ''Reward'' Subsidies for Enterprises in Zhejiang Province
E. Refunds of Legal Fees Paid in Antidumping and Countervailing Duty Investigations in Zhejiang Province and Jiashan County
F. Income Tax Programs in Huimin Industrial Park in Zhejiang Province
G. Export–Based ''Reward'' Subsidies for Enterprises in Huimin Industrial Park in Zhejiang Province
H. Income Tax Programs in the Hangzhou Export Processing Zone in Zhejiang Province
I. Provision of Land for LTAR for Export–Oriented FIEs for Enterprises Located in Shandong Province
J. Income Tax Programs for FIEs Located in Qingdao Municipality
K. Income Tax Offsets and/or Refunds for FIEs Purchasing Domestic Equipment in Qingdao Municipality
L. Provision of Land for LTAR for Export–Oriented FIEs Located in Qingdao Municipality
M. Income Tax Programs in the Lingang Processing Industrial Zone
N. Income Tax Programs for FIEs in Guangdong Province
O. Funds for Outward Expansion of Industries in Guangdong Province
P. Loans and Development Funds for Export–Oriented Enterprises in Guangdong Province
Q. Income Tax Programs for FIEs in Dongguan City in Guangdong Province
R. Income Tax Programs for Export–Oriented FIEs in Dongguan City in Guangdong Province

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Exporter/Manufacturer	Net Subsidy Rate
Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited	0.95% (*de minimis*)
Jiashan Superpower Tools Co., Ltd.	2.77%
Maxchief Investments Ltd.	254.52%
Qingdao EA Huabang Instrument Co., Ltd.	254.52%
Qingdao Hundai Tools Co., Ltd.	254.52%
Qingdao Taifa Group Co., Ltd.	254.52%
World Factory, Inc.	254.52%
All Others	2.77%

Sections 703(d) and 705(c)(5)(A) of the Act state that, for companies not investigated, we will determine an all others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States. However, the all others rate may not include zero and *de minimis* rates or any rates based solely on the facts available.[7] In this investigation, only Superpower's rate meets the criteria for the all others rate, that of Superpower. Therefore, we have assigned

[7] Pursuant to 19 CFR 351.204(d)(3), the Department must also exclude the countervailable subsidy rate calculated for a voluntary respondent. In this investigation we had no producers or exporters request to be voluntary respondents.

Superpower's rate to all other producers and exporters.

In accordance with sections 703(d)(1)(B) and (2) of the Act, except for Princeway, which has a *de minimis* rate, we are directing U.S. Customs and Border Protection to suspend liquidation of all entries of lawn groomers from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of merchandise in the amounts indicated above.

ITC Notification

In accordance with section 703(f) 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 relating 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, without the written consent of the Assistant Secretary for Import Administration. In accordance with section 705(b)(2)(B) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Unless otherwise notified by the Department, case briefs for this investigation must be submitted no later than 50 days after the date of publication of the preliminary determination. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who 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 of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: November 17, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

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