

to failure of the exporter or producer to meet the requirements of section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(B).

Initiation of Review

The antidumping duty order on certain cased pencils from the PRC has a December anniversary month. See *Antidumping Duty Order: Certain Cased Pencils From the People's Republic of China*, 59 FR 66909 (December 28, 1994). The Department received Wuxi's request for review on May 31, 2001. The

Department's regulations provide that it will initiate a new shipper review in the calendar month immediately following the semiannual anniversary month (*i.e.*, June), if the request for the review is made during the six-month period (*i.e.*, January—June) ending with the end of the semiannual anniversary month. See 19 CFR 351.214(d)(1).

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on certain cased pencils from the

PRC. We intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated.

Pursuant to 19 CFR 351.214(g)(1)(i)(A) of the Department's regulations, the period of review ("POR") for a new shipper review initiated in the month immediately following the semiannual anniversary month will be the six-month period immediately preceding the semiannual anniversary month (*i.e.*, December–May). Therefore, the POR for this new shipper is:

Antidumping duty proceeding	Period to be reviewed
Certain Cased Pencils from the PRC, A-570-827: Wuxi Andi Civilization PE Gift give Away Co., Ltd.	12/1/00-5/31/01

Concurrent with the publication of this initiation notice, and in accordance with 19 CFR 351.214(e), effective on the date of publication of this notice, we will instruct the U.S. Customs Service to suspend liquidation of unliquidated entries of subject merchandise from the above company and allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, until the completion of the review.

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: July 24, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-803]

Notice of Preliminary Results of Antidumping Duty New Shipper Review: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China

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

SUMMARY: In response to a timely request from Shandong Jinma Industrial Group Co., Ltd. (Jinma), on October 6,

2000, the Department of Commerce (the Department) published a notice of initiation of a new shipper review of the antidumping duty order on heavy forged hand tools, finished or unfinished, with or without handles (HFHTs) from the People's Republic of China (PRC) with respect to the above-mentioned exporter. The period of review is February 1, 2000, through July 31, 2000 (POR).

We preliminarily determine that sales of HFHTs, from the PRC, have been made below normal value. The preliminary results are listed below in "Preliminary Results of Review."

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with their arguments (1) a statement of the issue(s), and (2) a brief summary of the arguments. Further, we would appreciate it if parties submitting comments would provide the Department with an additional copy of the public version of any such comments on diskette.

EFFECTIVE DATE: August 1, 2001.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen at (202) 482-4195 or Ron Trentham at (202) 482-6320; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the

Department regulations refer to the regulations codified at 19 CFR part 351 (2000).

Case History

On February 19, 1991, the Department published in the **Federal Register** (56 FR 6622) the antidumping duty orders on HFHTs from the PRC. On July 20, 2000, the Department received a timely request, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, from Jinma to conduct a new shipper review of the antidumping duty order on hammers/sledges, one of the four classes or kinds of subject merchandise covered by the antidumping duty orders on HFHTs from the PRC. The order has a February anniversary month and an August semiannual anniversary month. This request was made pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations, which state that, if the Department receives a request for review from an exporter or producer of the subject merchandise stating that it did not export the merchandise to the United States during the period covered by the original investigation (POI) and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer.

The regulations require that the exporter or producer include in its request, with appropriate certifications: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first

entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (ii) a list of the firms with which it is affiliated; (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI; and (iv) in an antidumping proceeding involving inputs from a non-market-economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government. *See* 351.214(b)(2) of the Department's Regulations.

The request received from Jinma was accompanied by information and certifications establishing the effective date on which Jinma first shipped and entered HFHTs for consumption in the United States, the volume of the shipment, and the date of first sale to an unaffiliated customer in the United States. Jinma certified that it was not affiliated with any company which exported HFHTs from the PRC during the POI. In addition, Jinma certified that its export activities are not controlled by the central government. On October 6, 2000, the Department published its initiation of this new shipper review for the period February 1, 2000 through July 31, 2000. *See Heavy Forged Hand Tools From the People's Republic of China: Initiation of New-Shipper Antidumping Administrative Review*, FR 59824 (October 6, 2000).

On March 26, 2001, the Department published an extension of the deadline for completion of the preliminary results of this new shipper review until July 25, 2001. *See Notice of Extension of Time Limit for Preliminary Results of New Shipper Antidumping Review: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China*, 66 FR 16444 (March 26, 2001).

Scope of Review

HFHTs from the PRC comprise the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes. This review covers shipments of one class or kind of merchandise, hammers and sledges with heads over 1.5 kg (3.33 pounds).

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be

imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these orders is dispositive.

New Shipper

Based on the questionnaire responses received from Jinma, we preliminarily determine that Jinma met the requirements to qualify as a new shipper during the POR. We have determined that Jinma made its first sale or shipment of subject merchandise to the United States during the POR, that its sales were bona fide sales, and that Jinma was not affiliated with any exporter or producer that previously shipped to the United States.

Separate Rates

Jinma requested a separate, company-specific rate. In its questionnaire responses, Jinma states that it is an independent legal entity. To establish whether a company operating in an NME country is entitled to a separate rate, the Department analyzes an exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by, *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of de jure absence of government control over export

activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether the exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether the exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether the exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether the exporter has autonomy from the government regarding the selection of management.

De jure Control

With respect to the absence of de jure government control over the export activities of Jinma, evidence on the record indicates that Jinma is not controlled by the government. Jinma submitted evidence of its legal right to set prices independent of all government oversight. The business license of Jinma indicates that it is permitted to engage in the exportation of tools and its export license grants Jinma permission to export "self produced sledge hammer, storing hammer, crosspein sledge hammer * * * and varies of forged part, casting part [sic] * * *" No export quotas apply to HFHTs. Prior verifications in this proceeding of other Chinese companies producing HFHTs covered by this case have confirmed that there are no commodity-specific export licenses required and these previous reviews and investigations have found no evidence of quotas for HFHTs established by the Chinese government. Jinma's business license categorizes it as a limited company, which places Jinma under the company law of the PRC, as stated under chapter 1, article 2 of The Company Law of the People's Republic of China. Further, PRC company law at Chapter 1, article 5 provides that a company "shall use all of the resources to which it is entitled as a legal entity to achieve autonomy of company management and company accountability for its own profits and losses in accordance with law." We find no evidence of *de jure* government control restricting Jinma from the exportation of HFHTs. We therefore preliminarily determine that there is an

absence of de jure control over export activity with respect to Jinma.

De Facto Control

With respect to the absence of *de facto* control over export activities, the information provided indicates that the management of Jinma is responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. We found no evidence of government involvement in the daily operations or the selection of management of Jinma. In addition, we have found that Jinma's pricing and export strategy decisions are not subject to any outside entity's review or approval, and that there are no governmental policy directives that affect these decisions.

We found no evidence of restrictions on the use of export earnings. Jinma's sales department manager and senior company officials have the right to negotiate and enter into contracts binding the company to sell merchandise. There is no evidence that this authority is subject to governmental approval. Jinma has stated that its directors are selected by the shareholders of Jinma and that the directors appoint the officers and managers of each department and that there is no government involvement in the selection process. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over their export activities, we preliminarily determine that separate rates should be applied to Jinma.

Export Price

In accordance with section 772(a) of the Act, the Department calculated an EP for sales to the United States because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and the use of constructed export price was not otherwise warranted. We made deductions from the selling price to unaffiliated parties for foreign brokerage and handling and foreign inland freight. Each of these services were provided by an NME vendor. Thus, we based the deduction for these movement charges on surrogate values (*see* the discussion regarding companies located in NME countries and the Department's selection of a surrogate country in the *Normal Value* section of this notice).

For brokerage and handling, we used price quotes from two Indian freight forwarders in November 1999, and adjusted them for inflation. The sources used to value foreign inland freight are

identified below in the *Normal Value* section of this notice.

To account for inflation or deflation between the time period that the foreign brokerage and handling and foreign inland freight rates were in effect and the POR, we adjusted the rates using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF) publication, *International Financial Statistics*. For further discussion of the surrogate values used in this review, *see* Memorandum From the Team Regarding Surrogate Values Used for the Preliminary Results of the New Shipper Review of Certain Heavy Forged Hand Tools From the People's Republic of China, (July 25, 2001), (Surrogate Value Memorandum), which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

Normal Value

For exports from NMEs, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production (FOP) methodology if (1) the subject merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value. Section 351.408 of the Department's regulations sets forth the Department's methodology for calculating the NV of merchandise from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as an NME. Since none of the parties to these proceedings contested such treatment in this review, we calculated NV in accordance with section 773(c) of the Act and section 351.408 of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOP utilized in producing HFHTs include, but are not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOP, to the extent possible, using the costs of the FOP in a market economy that is (A) at a level of economic development comparable to the PRC, and (B) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product, the growth rate in per capita income, and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. For further discussion of

the Department's selection of India as the surrogate country, *see* the Memorandum from Jeff May, Director, Office of Policy, to Jeff Pedersen, AD/CVD Enforcement Group II, dated March 16, 2001, which is on file in the CRU-Public File.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, when possible, we valued FOP using surrogate values that were in effect during the POR. Surrogate values that were in effect during periods other than the POR were adjusted, as appropriate, to account for price trends between the effective period and the POR. We made the adjustment, where appropriate, for all factor values, except labor, using the wholesale price indices for India that were reported in the IMF's publication, *International Financial Statistics*. We valued the FOP as follows:

(1) We valued direct materials used to produce HFHTs (i.e., steel scrap, paint, anti-rust oil, wood and resin glue) and the steel scrap generated from the production of HFHTs using the rupee per metric ton or rupee per kilogram value of imports that entered India during the POR as published in the Monthly Statistics of the Foreign Trade of India—Imports (Indian Import Statistics).

(2) We valued labor using a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3). This rate is identified on the Import Administration's web site (www.ita.doc.gov/import_admin/records/).

(3) We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using information reported for 1992–1993 in the January 1997 Reserve Bank of India Bulletin. From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses. Although this information is not contemporaneous with the POR, it is the most recent relevant data available. Moreover, as the SG&A values used are ratios rather than prices, price changes are not a concern.

(4) We valued packing materials, including cartons, pallets, iron straps, anti-damp paper, anti-rust paper, plastic strips, iron knots, tape and metal clips, using the rupee per metric ton or rupee per kilogram value of imports that entered India during the period February through July 2000 as

published in Indian Import Statistics. We valued hessian cloth (a packing material) using the rupee per kilogram value of imports that entered India during the period April through July 1998 as published in Indian Import Statistics.

(5) We valued coal using the price of steam coal in India in 1996 as reported in the International Energy Agency's publication, *Energy Prices and Taxes*, Second Quarter 1999 (EPT), the most recent data available.

(6) We valued electricity using the 1997 Indian electricity prices for industrial use as reported in EPT, the most recent data available.

(7) We used the following sources to value truck freight services incurred to transport direct materials, packing materials, and coal from the suppliers of the inputs to the factories producing HFHTs:

Truck Freight: If a respondent used its own trucks to transport material or subject merchandise, we valued freight services using the average cost of operating a truck, which we calculated from information published in *The Times of India* on April 24, 1994. Although this information is not contemporaneous with the POR, it is the most recent relevant data we could obtain. If a respondent did not use its own trucks or the respondent did not state that it used its own trucks, we valued freight services using price quotes obtained by the Department from Indian truck freight companies in November 1999.

The United States Court of Appeals for the Federal Circuit's (CAFC's) decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (CAFC 1997) requires that we revise our calculation of source-to-factory surrogate freight for those material inputs that are based on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate inland freight cost based on the shorter of the reported distances from (1) the closest PRC port to the factory or (2) the domestic supplier to the factory, on an import-specific basis.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margin exists for the period February 1, 2000 through July 31, 2000:

Manufacturer/exporter	Time period	Margin (percent)
Shandong Jinma Industrial Group Co., Ltd.: Hammers/Sledges	2/1/00–7/31/00	7.76

Any interested party may request a hearing in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing. Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 351.309(c)(1)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of these preliminary results, unless the time limit is extended.

Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the U.S. Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise

covered by the determination and for future deposits of estimated duties. For assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins (calculated as the difference between NV and EP) for the importer by the entered value of the examined sales for the importer. Where the importer-specific assessment rate is above *de minimis*, we will direct Customs to assess the resulting *ad valorem* rate against the entered value of the entry of the subject merchandise by that importer during the POR.

Furthermore, the following deposit rates will be effective upon publication of the final results of this review for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of this review; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC-wide rate; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and notice are issued and published in accordance with sections 751(a)(2)(f) and 777(i)(1) of the Act.

Dated: July 25, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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