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This notice serves as a final reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding 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 notice also serves as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: March 6, 1997.

Robert S. LaRussa,  
*Acting Assistant Secretary for Import Administration.*

[FR Doc. 97-6378 Filed 3-12-97; 8:45 am]

BILLING CODE 3510-DS-P

[A-588-810]

### **Mechanical Transfer Presses From Japan; Final Results of Antidumping Administrative Review**

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

**ACTION:** Notice of final results of antidumping duty administrative review; mechanical transfer presses from Japan

**SUMMARY:** On November 6, 1996, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan. The review covers three manufacturers/exporters of the subject merchandise to the United States and the period February 1, 1995 through January 31, 1996. We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from

petitioners, Verson Division of Allied Products Corp., the United Autoworkers of America, and the United Steelworkers of America (AFL-CIO/CLC) (petitioners). We received rebuttal comments from Aida Engineering, Ltd. (Aida). Based on our analysis, we have changed the final results from those presented in the preliminary results of review. We have determined that sales have not been made below normal value (NV).

**EFFECTIVE DATE:** March 13, 1997.

**FOR FURTHER INFORMATION CONTACT:** Elisabeth Urfer or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482-4733.

#### **SUPPLEMENTARY INFORMATION:**

##### **Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective 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's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

##### **Background**

On November 6, 1996, the Department published the preliminary results of the review of the antidumping duty order on MTPs from Japan (61 FR 57387, November 6, 1996). The Department has now completed this administrative review in accordance with section 751 of the Act.

##### **Scope of Review**

Imports covered by this review include MTPs currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8462.99.0035 and 8466.94.5040. The HTS numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive of the scope of the order.

The term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may

be imported assembled or unassembled. This review does not cover certain parts and accessories, which were determined to be outside the scope of the order. (See "Final Scope Ruling on Spare and Replacement Parts," U.S. Department of Commerce, March 20, 1992; and "Final Scope Ruling on the Antidumping Duty Order on Mechanical Transfer Presses (MTPs) from Japan: Request by Komatsu, Ltd.," U.S. Department of Commerce, October 1, 1996.)

This review covers three manufacturers/exporters of MTPs, and the period February 1, 1995 through January 31, 1996.

##### **Analysis of the Comments Received**

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from petitioners and rebuttal comments from Aida.

##### **Comment 1**

Petitioners contend that the Department should exclude below-cost sales from the calculation of constructed value profit (CV profit). Petitioners argue that the Department's decision to include below-cost sales in CV profit is contrary to the statute, the Department's current practice, and the Statement of Administrative Action (SAA) accompanying the URAA. Petitioners note that, in the preliminary results, the Department determined that Aida's home market is viable, but that the particular market situation requires that NV be based on constructed value (CV) due to the many differences in specifications between the various presses, and because no merchandise sold in the home market or to a third country is identical to the merchandise sold to the United States. Petitioners note that, consequently, the Department calculated SG&A and profit based on home market sales of MTPs in accordance with section 773(e)(2)(A) of the Act.

Petitioners state that section 773(e)(2)(A) of the Act requires the Department to add to CV:

the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review of selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, before consumption in the foreign country,  
or \* \* \*

and that section 771(15) of the Act defines the term "ordinary course of trade" as excluding sales determined to be below cost under section 773(b)(1) of the Act. Petitioners argue that sales below cost are not in the ordinary

course of trade and must be excluded from CV. Petitioners contend that in the 1994–1995 review the Department determined that sales were not actually disregarded under section 773(b) of the Act, and therefore were not outside the ordinary course of trade, because petitioners had not filed a cost allegation and consequently Commerce had not investigated below-cost sales. Petitioners argue that, from the original less-than-fair value investigation, NV in MTP cases has always been based on CV, and that there was no need for them to file a sales-below-cost allegation, since all the cost information necessary to conduct such an investigation was already before the Department. In addition, petitioners argue, the Department has determined, in CV cases, that a formal cost allegation by petitioners or initiation of a cost investigation by the Department pursuant to section 773(b) of the Act is not required for the Department to have “reasonable grounds to believe or suspect” that sales of a foreign like product are made at prices less than the cost of production, and, therefore, are outside the ordinary course of trade.

Petitioners argue that the Department addressed this issue in the investigation of sales at less than fair value of large newspaper printing presses (LNPPs), another CV case involving custom-made, large machines. See Notice of Final Determination of Sales at Less-Than-Fair Value: Large Newspaper Printing Presses from Japan, 61 FR 38139 (July 23, 1996) (LNPPs from Japan). Petitioners argue that, in LNPPs from Japan, the Department determined that, as with MTPs, because of the unique specifications and custom-built nature of this product, the Department would base NV on CV, and would calculate selling, general, and administrative expenses and profit in accordance with section 773(e)(2)(A) of the Act. Petitioners note that in LNPPs from Japan petitioners filed a cost allegation, but the Department did not formally initiate a cost investigation. Petitioners argue that the Department acknowledged the unique cost reporting aspects of CV, stating that it:

In effect \* \* \* conducted a cost investigation and our analysis revealed evidence that there were home market sales of merchandise within the purview of this investigation which were below-cost. Section 771(15) provides that sales and transactions considered outside the ordinary course of trade include “among others” below-cost sales disregarded under Section 773(b)(1). The Department interprets this provision to apply to the exclusion of below-cost sales, even if such sales were not formally disregarded pursuant to Section 773(b)(1) of the Act.

Petitioners argue that LNPPs from Japan is analogous to the present review of MTPs, but contend that the Department reached the opposite conclusion in LNPPs from Japan, and excluded below-cost sales from the CV profit calculation as outside the ordinary course of trade. Petitioners argue that, likewise, in Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 61 FR 56515 (November 1, 1996) (Pipe and Tube from Thailand), the Department excluded below-cost sales from the calculation of CV profit. Petitioners cite to *Secretary of Agriculture v. United States*, 347 U.S. 645, 652–53 (1954) and argue that it is axiomatic that an agency must conform its decisions to its prior practice or explain the reasons for its departure from that prior practice, and that, in this review of MTPs, the Department has failed to explain its departures from its prior practice in LNPPs from Japan and Pipe and Tube from Thailand. Petitioners conclude that, based on the foregoing, for the final results the Department should exclude below-cost sales from the CV profit calculation for Aida.

Petitioners argue that, in the administrative review of MTPs from Japan covering the period February 1, 1994 through January 31, 1995 (1994–1995 review), the Department’s final results were also contrary to the statute and Department practice. Petitioners contend that, in the 1994–1995 review, the Department excluded below-cost sales in its profit calculation for its preliminary results, then reversed this preliminary determination, even though the parties had not briefed the issue.

Aida contends that the Department properly included all of Aida’s home market sales in calculating CV profit. Aida argues that section 773(e)(2)(A) of the Act provides for the calculation of profit based on:

the actual amounts \* \* \* realized by the specific exporter or producer being examined in the \* \* \* review \* \* \* for profits, in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country.

Aida states that section 771(15)(A) of the Act, which defines the ordinary course of trade, provides that sales disregarded under section 773(b)(1) may be treated as outside the ordinary course of trade; section 773(b)(1), in turn, states that, whenever the Department has reasonable grounds to believe or suspect that sales of the foreign like product have been made below cost, it shall determine whether this is the case and whether certain other conditions have

been met. Aida argues that, if the Department resolves these issues in the affirmative, such sales may be disregarded in the determination of NV. Aida notes that section 773(b)(2) states that there are reasonable grounds to believe that below-cost sales were made if (1) An interested party made an allegation of below-cost sales or (2) the Department disregarded as below cost some or all of the exporter’s sales in a prior review. Aida states that no below-cost allegation was submitted in this review pursuant to section 353.31(c), the Department did not make any determination of below-cost sales under section 773(b)(1), and no sales were disregarded under section 773(b)(1). Aida also disagrees with petitioners’ argument that below-cost sales *per se* are outside the ordinary course of trade. Aida asserts that this is not what the statute says; rather, Aida states, the definition of ordinary course of trade refers specifically to sales disregarded under section 773(b)(1), and a determination to disregard sales under section 773(b)(1) is a statutory prerequisite to excluding below-cost sales from the ordinary course of trade and from the CV profit calculation. Aida argues that section 773(b) is not applicable in the present proceeding, since there was no allegation of sales below cost and home market sales were not considered as the basis for NV. Aida argues that, accordingly, the conditions for treating any sales as outside the ordinary course of trade have not been met.

Aida argues that the Department’s inclusion of below-cost sales in the CV profit calculation is not inconsistent with its decisions in LNPPs from Japan and Pipe and Tube from Thailand. Aida argues that, in LNPPs from Japan, the petitioner had filed a timely and proper cost allegation, and the Department conceded that it should have formally addressed the sales-below-cost allegation, but stated that it did not foresee the implications of a formal initiation of a sales-below investigation would have on the CV profit and SG&A calculations. Aida argues that the issue faced by the Department in LNPPs from Japan does not exist here and the Department’s decision in LNPPs from Japan is inapplicable. Aida argues that, in Pipe and Tube from Thailand, the Department initiated a below-cost investigation pursuant to section 773(b)(2), and as a result of that investigation disregarded certain home market sales under section 773(b)(1).

Aida further contends that petitioners’ argument that Aida’s sales are outside the ordinary course of trade is not supported by the SAA. Aida notes that,

with regard to section 773(e)(2)(A), cited by petitioner, the SAA states that "under section 773(e)(2)(A), in most cases, Commerce would use profitable sales as the basis for calculating profit for purposes of constructed value," and argues that this statement clearly recognizes that in certain circumstances below-cost sales should be included in the profit calculation. SAA at 170, House Doc. 103-316 at 840. Aida contends that such circumstances exist in this case.

Aida points out that the Department noted in LNPPs from Japan that:

this being one of the first cases under the new law, we are still developing our practice for computing profit and SG&A in accordance with the new law.

Aida argues that, in this context, and in view of the petitioner's below-cost allegations, the Department stated in LNPPs from Japan that below-cost sales could be excluded "even if such sales were not formally disregarded pursuant to section 773(b)(1) of the Act." Aida contends that the Department apparently relied upon the phrase "among others" in section 771(15), which defines ordinary course of trade, as the basis for this statement, and argues that that provision is inapplicable in the present case. Aida contends that in explaining "among others" the SAA states:

Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales have characteristics that are not ordinary as compared to sales or transactions generally made in the same market.

Examples of such sales include "merchandise produced to unusual product specifications, merchandise sold at aberrational prices, or merchandise sold pursuant to unusual terms of sale." SAA at 164, House Doc. 103-316 at 834. Aida argues that there is no evidence in the record that Aida's below-cost sales fell into any such category or otherwise were outside the ordinary course of trade.

Aida contends that, even if the requisite conditions for disregarding home market sales had been met, the Department was within its discretion in not excluding such sales from CV profit. Aida argues that section 773(b)(1) states that, when sales are found to meet the conditions set forth therein, such sales may be disregarded in the determination of NV, but that such sales are not automatically disregarded. Aida further argues that, even if sales are disregarded under section 773(b)(1), the SAA makes clear that they are neither automatically outside the ordinary course of trade nor automatically excluded from CV profit.

Aida argues that there was no reason for the Department to make any determination as to whether any home market sales should be disregarded under section 773(b)(1) since it concluded at the outset of the review that NV should be based on CV. Aida also notes that no allegation of sales below cost was received by the Department. Aida maintains that the Department properly determined that the conditions were not met for treating below-cost home market sales as outside the ordinary course of trade and properly included all home market sales of MTPs in its calculation of CV.

Aida disagrees with petitioners contention that the Department's decision on this point in the 1994-1995 review is contrary to the statute, Department practice, and the SAA. Aida argues that in the 1994-1995 review the Department concluded that there was no basis for excluding below-cost sales from the CV profit calculation because the Department did not receive an allegation that home market sales were made at prices below the cost of production, and did not determine that any home market sales were outside the ordinary course of trade.

*Department's Position:* As both petitioners and Aida note, section 773(e)(2)(A) requires that sales used as the basis of CV profit be made in the ordinary course of trade. Section 771(15) of the Act defines the ordinary course of trade as:

the conditions or practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.

Section 771(15) further provides that sales and transactions considered outside the ordinary course of trade include, "among others," below-cost sales disregarded under section 773(b)(1). Section 773(b)(1) directs the Department to disregard sales made at less than the cost of production that have been made within an extended period of time (*i.e.*, normally one year, but not less than six months) in substantial quantities, and at prices which do not permit recovery of all costs within a reasonable period of time.

MTPs are large custom-built capital equipment, where the merchandise produced for each sale is unique. In such cases, the Department often resorts to the use of CV rather than conducting price-to-price comparisons. In this case, the Department determined to go directly to CV because, while the home market was viable, the particular market situation, which requires that the subject merchandise be built to each

customer's specifications, did not permit proper price-to-price comparisons in either the home market or third countries. See *Mechanical Transfer Presses From Japan*; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 57387 (November, 6, 1996). As a result, we did not require that Aida provide home market sales data. Neither party has contested the use of CV.

In order to calculate profit pursuant to section 773(e)(2)(A) of the Act, we asked Aida to provide aggregate cost and sales data for its home market sales of MTPs. Aida, however, provided us with a detailed cost build-up, a total cost of production, a comparison sales price, and a resulting loss for certain of its home market sales. Based on this information, the Department had reasonable grounds to believe that home market sales of the foreign like product were made at prices below the cost of production. Because each MTP is custom-built, differs significantly in specifications, and is essentially a discrete model, we performed the cost test on a sale-by-sale basis. The Department found that some home market models were sold at prices below the cost of production in substantial quantities, within an extended period of time, and at prices which do not permit recovery of cost within a reasonable period of time.

We conclude, therefore, that in this review it is appropriate to exclude these sales from the profit calculation as outside the ordinary course of trade, pursuant to section 771(15) of the Act. The fact that technically we did not "disregard" such sales in a price-based determination of NV as provided in section 771(15) of the Act, does not prevent the Department from finding these sales to be outside the ordinary course of trade when we have, in effect, conducted a cost test on the sales and found that they have failed. We would have disregarded these sales, pursuant to section 773(b)(1) of the Act, if we were using price-to-price comparisons, and, as a result, we believe it is appropriate to do so here. With respect to petitioner's comments regarding the final results of review for the 1994-1995 period, those results are in litigation before the Court of International Trade, and should properly be addressed in the context of that litigation.

#### Final Results of the Review

We determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Aida Engineering, Ltd. ....	2/1/95—1/31/96	0.00
Hitachi-Zosen .....	2/1/95—1/31/96	<sup>1</sup> 0.00
Ishikawajima-Harima Heavy Industries, Ltd. ....	2/1/95—1/31/96	<sup>1</sup> 0.00

<sup>1</sup> No shipments subject to this review. Rate is from the last segment of the proceeding in which the firm had shipments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of these final results for all shipments of MTPs from Japan 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 reviewed companies will be the rate established in these final results; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the rate established in the investigation of sales at less than fair value, which is 14.51 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 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 subsequent assessment of double antidumping duties.

#### Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written

notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 6, 1997.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 97-6382 Filed 3-12-97; 8:45 am]

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#### [A-570-501]

#### **Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Antidumping Duty Administrative Review**

**AGENCY:** International Trade Administration/Import Administration.

**ACTION:** Notice of final results of the antidumping duty administrative review of natural bristle paint brushes and brush heads from the People's Republic of China.

**SUMMARY:** On November 6, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping order on natural bristle paint brushes and brush heads (paint brushes) from the People's Republic of China (PRC). The review covers the period February 1, 1995 through January 31, 1996.

We gave interested parties an opportunity to comment on our preliminary results. The Department received no comments, and these final results of review remain unchanged from the preliminary results of review.

**EFFECTIVE DATE:** March 13, 1997.

#### **FOR FURTHER INFORMATION CONTACT:**

Elisabeth Urfer or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482-4733.

#### **SUPPLEMENTARY INFORMATION:**

##### **Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective 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's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

##### **Background**

On November 6, 1996, the Department published the preliminary results of review (61 FR 57389). The Department has now completed this administrative review in accordance with section 751 of the Act.

##### **Scope of Review**

Imports covered by this review are shipments of natural bristle paint brushes and brush heads from the PRC. Excluded from the order are paint brushes with a blend of 40 percent natural bristles and 60 percent synthetic filaments. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

This review covers the period February 1, 1995 through January 31, 1996.

##### **Final Results of Review**

We gave interested parties an opportunity to comment on the preliminary results. The Department received no comments, and we have not changed the results from the preliminary results.

We determine that the following dumping margins exist: