C-570-913
Administrative Review
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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James P. Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results in the Countervailing Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2015

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers of certain new pneumatic off-the-road tires (OTR tires) from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). We recommend that you approve the positions described in the "Analysis of Comments" section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from interested parties.

Comment 1 Whether Commerce Should Use Guizhou Tyre's Imports as Tier 1 Benchmarks for Synthetic Rubber
Comment 2 Whether Certain Benchmarks Used by Commerce in the Preliminary Results Double-counted Freight and Import Duties
Comment 3 Whether Commerce Should Countervail Certain Synthetic Rubber Purchased from Foreign Companies
Comment 4 Whether Commerce Should Find that Guizhou Tyre Used the Export Buyer's Credit Program
Comment 5 Whether the GOC's Import Duty and VAT Exemption on Imports of Raw Materials Program (Processing Trade Program) is Countervailable

In response to comments raised in parties' case and rebuttal briefs, we made certain changes to the preliminary results. The "Analysis of Comments" section below contains summaries of these comments and Commerce's related positions.

II. BACKGROUND

A. Case History

On October 6, 2017, Commerce published the *Preliminary Results* of the administrative review of the countervailing duty (CVD) order on certain new pneumatic off-the-road tires (OTR tires) from the China.[1] The period of review (POR) is January 1, 2015, through December 31, 2015. The mandatory respondents are Guizhou Tyre Co., Ltd. (Guizhou Tyre) and Xuzhou Xugong Tyres Co. Ltd. (Xuzhou Xugong). We conducted verification of Guizhou Tyre's questionnaire responses on December 4-8, 2017.[2]

Subsequent to verification, we received case briefs and rebuttal briefs from interested parties, including Guizhou Tyre, the Government of the People's Republic of China (GOC), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (the USW) (collectively, the petitioners).[3]

B. Period of Review

The period of review (POR) for this administrative review is January 1, 2015, through December 31, 2015.

III. SCOPE OF THE INVESTIGATION

The products covered by the scope are new pneumatic tires designed for off-the-road (OTR) and off-highway use, subject to exceptions identified below. Certain OTR Tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces,

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[1] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015,* 82 FR 46754 (October 6, 2017) (*Preliminary Results*) and accompanying Issues and Decision Memorandum.

[2] *See* Memorandum to the file, "Verification of the Questionnaire Responses of Guizhou Tyre Co., Ltd., and Guizhou Tyre Import and Export Co., Ltd.," (February 1, 2018) (*Verification Report*).

[3] *See* letter from Guizhou Tyre, "Case Brief of Guizhou Tyre Certain New Pneumatic Off-the-Road Tires from the People's Republic of China (C-570-913) (POR 2015" (February 8, 2018) (Guizhou Tyre's Case Brief); letter from the GOC, "Case Brief of the Government of the People's Republic of China Certain New Pneumatic Off-The-Road Tires from the People's Republic of China (C-570-913)(POR 2015)" (February 8, 2018) (GOC's Case Brief); letter from petitioners, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China (C570-913): The USW's Rebuttal Brief" (February 13, 2018) (Petitioners' Rebuttal Brief).

including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR Tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,[4] combine harvesters,[5] agricultural high clearance sprayers,[6] industrial tractors,[7] log-skidders,[8] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;[9] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[10] front end loaders,[11] dozers,[12] lift trucks, straddle carriers,[13] graders,[14] mobile cranes,[15] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks.[16] The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within

[4] Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.
[5] Combine harvesters are used to harvest crops such as corn or wheat.
[6] Agricultural sprayers are used to irrigate agricultural fields.
[7] Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.
[8] A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.
[9] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.
[10] Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.
[11] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.
[12] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.*, typically around construction sites. They can also be used to perform "rough grading" in road construction.
[13] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.
[14] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform "finish grading." Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.
[15] *i.e.*, "on-site" mobile cranes designed for off-highway use.
[16] A counterbalanced lift truck is a rigid framed, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the proceeding range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type[17] or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.70.0010, 4011.62.00.00, 4011.80.1020, 4011.90.10, 4011.70.0050, 4011.80.1010, 4011.80.1020, 4011.80.2010, 4011.80.2020, 4011.80.8010, and 4011.80.8020. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol "DOT" must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:
P - Identifies a tire intended primarily for service on passenger cars;
LT - Identifies a tire intended primarily for service on light trucks; and,
ST - Identifies a special tire for trailers in highway service.

Suffix letter designations:
TR - Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156" or plus 0.250";
MH - Identifies tires for Mobile Homes;
HC - Identifies a heavy duty tire designated for use on "HC" 15" tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
Example: 8R17.5 LT, 8R17.5 HC;
LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
MC - Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also, excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim

[17] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

Based on case briefs, rebuttal briefs, and all supporting documentation, we made certain changes to some of our benefit calculations for Guizhou Tyre from those in the *Preliminary Results*. These changes are discussed in the "Analysis of Comments" section below. However, we continue to find that Guizhou Tyre benefitted from countervailable subsidies during the POR.

V. NON-SELECTED COMPANIES UNDER REVIEW

For the companies for which a review was requested that were not selected for individual examination as mandatory company respondents, and for which we did not receive a timely request for withdrawal of review and are not finding to be cross-owned with the mandatory company respondents, we based the subsidy rate on rates calculated for Guizhou Tyre and its cross-owned affiliates, which are above *de minimis* and are not based entirely on facts available. This is consistent with our normal practice, in accordance with section 705(c)(5)(A)(i) of the Act, which is to base the subsidy rates on an average of the subsidy rates calculated, excluding *de minimis* rates or rates based entirely on adverse facts available (AFA).[18] For a list of these companies, please *see* the *Federal Register*.[19]

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to the allocation period, 14 years, of the allocation methodology used in the *Preliminary Results.*[20]

B. Attribution of Subsidies

Commerce has made no changes to the attribution methodologies used in the *Preliminary Results*.[21]

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[18] *See, e.g.*, *Certain Pasta from Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 18806, 18811 (April 13, 2010) *unchanged in Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386 (June 29, 2010).
[19] *See* "*Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*."
[20] *See Preliminary Results* and accompanying Issues and Decisions Memorandum at 17.
[21] *Id*.

C. Denominators

Commerce has made no changes to the denominators used in the *Preliminary Results.*[22]

D. Benchmarks and Discount Rates

Except where noted below, Commerce has made no changes to the benchmarks and discount rates used in the *Preliminary Results*.[23] Interested parties raised issues with respect to the benchmark for synthetic rubber and with respect to whether Commerce double-counted freight and import duties for certain benchmarks, which we address at Comments 1 and 2 below, respectively. We have recalculated the benchmark for synthetic rubber to include certain synthetic rubber produced outside China which were reported in Guizhou Tyre's domestic purchase database, see Comment 3 below.

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

In accordance with sections 776(a) and (b) of the Act, Commerce relied on "facts otherwise available," including AFA, for several findings in the *Preliminary Results*.[24] Specifically, Commerce applied AFA with respect to: 1) Xuzhou Xugong;[25] 2) whether Guizhou Tyre's suppliers are "authorities";[26] 3) the Provision of Electricity at LTAR;[27] 4) the Provision of Land Use Rights at LTAR;[28] and 5) Export Buyer's Credits from State-Owned Banks.[29] No interested parties commented with regard to these determinations. The total AFA rate applied to Xuzhou Xugong is 91.94 percent.[30] Commerce has not made any changes to its determination to rely on facts otherwise available and AFA, as applied in the *Preliminary Results*, nor to the AFA rate assigned to Xuzhou Xugong. Interested parties raised comments with respect to the application of AFA to the Export Buyer's Credit Program, which we address at Comment 4 below.

VIII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

Except where noted below, Commerce made no changes to its *Preliminary Results* with regard to the methodologies used to calculate the subsidy rates for the programs determined to be

[22] *See Preliminary Results* and accompanying Issues and Decisions Memorandum at 20.
[23] *Id.* at 20-26.
[24] *See Preliminary Results* and accompanying Issues and Decisions Memorandum at 6-17; *see also* Guizhou Tyre Final Calculation Memorandum.
[25] *See* PDM at 7-8.
[26] *Id*. at 8-9.
[27] *Id*. at 9-13.
[28] *Id*. at 13-14.
[29] *Id*. at 14-17.
[30] *See Preliminary Results* and accompanying Issues and Decisions Memorandum at 7-8.

countervailable. Additionally, except where noted below, no issues were raised by parties in case briefs for these programs. The final program rates are as follows:

1. Import Duty and VAT Exemptions on Imports of Raw Materials (Processing Trade Program)

   As discussed in Comment 5 below, Commerce has continued to countervail this program with regard to the import duty exemptions. To calculate the amount of the benefit for the final results, we calculated the total amount of import duties that would otherwise have been paid on the exempted materials, using the duty rates for the different types of materials reported by the GOC and the respondent companies. We then divided the total amount of this benefit by Guizhou Tyre's total export sales during the POR and determined a countervailable subsidy rate of 5.27 percent ad valorem for Guizhou Tyre.[31] With regard to the VAT exemption, Commerce has determined that there is insufficient information on the record to find that the exemption of VAT under this program is countervailable under 19 CFR 351.517. We will continue to examine the VAT component of the program in the next administrative review.

2. Provision of Synthetic Rubber at less-than-adequate-remuneration (LTAR)

   As discussed in Comment 3 below, Commerce made changes to its *Preliminary Results* for this program. Guizhou Tyre's final subsidy rate for this program is 6.47.[32]

3. Export Buyer's Credits from State-Owned Banks

   As discussed in Comment 4, Commerce has made no changes to its *Preliminary Results* for this program. The final subsidy rate for Guizhou Tyre is 2.04 percent.[33]

4. Income Tax Reductions for High- and New- Technology Enterprises

   Guizhou Tyre: 0.26 percent.[34]

5. Enterprise Income Tax Law, Research and Development Program

   Guizhou Tyre: 0.11 percent.[35]

6. Export Seller's Credits from State-Owned Banks

   Guizhou Tyre: 0.58 percent.[36]

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[31] *Id*. at 35-36; *see* also Guizhou Tyre Final Calculation Memorandum.
[32] *Id.* at 33*; see also* Guizhou Tyre Final Calculation Memorandum.
[33] *Id*. at 38.
[34] *Id*. at 27-28.
[35] *Id*. at 28-29.
[36] *Id*. at 29.

7. Provision of Land-Use Rights to OTR Tire Producers for LTAR
Guizhou Tyre: 2.21 percent.[37]
8. Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR
Guizhou Tyre: 0.00 percent.[38]
9. Government Provision of Land to State-Owned Enterprises (SOEs)
Guizhou Tyre: 0.24 percent.[39]
10. Provision of Land for LTAR to FIEs
Guizhou Tyre: 0.00 percent.[40]
11. Provision of Electricity for LTAR
Guizhou Tyre: 1.14 percent.[41]
12. Government Policy Lending
Guizhou Tyre: 6.86 percent.[42]
13. Provision of Natural Rubber at LTAR
Guizhou Tyre: 0.00 percent.[43]
14. Provision of Nylon Cord by SOEs for LTAR
Guizhou Tyre: 1.57 percent.[44]
15. Provision of Carbon Black by SOEs for LTAR
Guizhou Tyre: 4.35 percent.[45]
16. State Key Technology Renovation Project Fund
Guizhou Tyre: 0.04 percent.[46]
17. VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
Guizhou Tyre: 0.08 percent.[47]
18. Other Subsidy Programs
Guizhou Tyre: 0.27 percent.[48]

B. Programs Determined to Be Not Used During the POR

Commerce made no changes to its *Preliminary Results* with regard to the following programs found to be not used by Guizhou Tyre during the POR.[49]

1. Government Debt Forgiveness

[37] *Id*. at 29-31.
[38] *Id.*
[39] *Id*.
[40] *Id.*
[41] *Id*. at 31-32.
[42] *Id*. at 32-33.
[43] *Id*. at 33.
[44] *Id*. at 34.
[45] *Id*. at 34-35.
[46] *Id*. at 36-37.
[47] *Id*. at 37-38.
[48] *Id*. at 38.
[49] *See Preliminary Results* and accompanying Issues and Decisions Memorandum at 38-39.

2. Special Fund for Environmental Protection of 2004
3. Loan Forgiveness for SOEs
4. Funds for Outward Expansion of Industries in Guangdong Province
5. Export Interest Subsidy Funds for Enterprises Located in Guangdong and Zhejiang Provinces
6. Grants to Loss-Making SOEs
7. Exemption for SOEs from Distributing Dividends to the State
8. Provincial Support in Antidumping Proceedings
9. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Income Tax Program)
10. Preferential Tax Policies for Export-Oriented FIEs
11. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises
12. Tax Benefits for FIEs in Encourage Industries that Purchase Domestic Origin Machinery
13. VAT Rebate for FIE Purchases of Domestically Produced Equipment
14. Tax Subsidies to FIEs in Specially Designated Geographic Areas
15. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs
16. Preferential Tax Policies for Advanced Technology Foreign Invested Enterprises
17. Preferential Tax Policies for Knowledge or Technology Intensive FIEs
18. Foreign Currency Retention Scheme
19. Discounted Loans for Export Oriented Enterprises
20. Preferential Tax Policies for Research and Development by FIEs
21. Preferential Tax Policies for High or New Technology FIEs
22. The Clean Production Technology Fund
23. Xuzhou Municipal Government Subsidies for Nurturing Industrial Enterprises (Groups) with Revenue Above 100 Billion Yuan and 10 Billion Yuan

C. Programs Determined to Provide No Benefit During the POR

Commerce made no changes to its *Preliminary Results* with respect to the following programs found not to have provided a benefit to Guizhou Tyre during the POR.[50]

1. Municipal Major Technical Innovation Program
2. Local and Provincial Technology Renovation Grants to Guizhou Tyre and its Affiliates
3. Special Fund for Energy-Saving Technology Reform
4. Special Funds for the Development of Industrialization and Informationization of Guiyang
5. Grants for Export Credit Insurance
6. Local and Provincial Export Grants to Guizhou Tyre and Its Affiliates
7. Export Loan Interest Subsidies
8. Business Development and Industrial and Trading Development Funds
9. Local and Provincial Export Grants to Guizhou Tyre

[50] *See Preliminary Results* and accompanying Issues and Decisions Memorandum at 39-40.

10. Local and Provincial Technology Renovation Grants to Guizhou Tyre and Its Affiliates
11. Special Fund for Energy-Saving Technology Reform
12. Special Fund for the Development of Industrialization and Informatization of Guiyang
13. Export Loan Interest Subsidies
14. Advanced Technology Innovation Reward
15. Patent Supportive Reward
16. Business Development Funds
17. Industrial and Trading Development Funds
18. Export Credit Insurance Supportive Funds
19. Business Development Specific Funds
20. 2013 Encouragement Funds to Private Enterprise

IV. FINAL RESULTS OF REVIEW

Based on the analysis provided below, we determine the net total *ad valorem* subsidy rate for these final results is as follows:

Company	Net Subsidy Rate
Guizhou Tyre	31.49 percent (*ad valorem)*
Xuzhou Xugong	91.94 percent (*ad valorem)*
Non-Selected Companies	31.49 percent (*ad valorem*)

V. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce Should Use Guizhou Tyre's Imports as Tier 1 Benchmarks for Synthetic Rubber

Guizhou Tyre:

- Commerce's market distortion analysis for synthetic rubber analysis is not consistent with the analysis used in the previous review. There, the GOC-owned producers accounted for 34.35% and imports accounted for 22.56% of production, and Commerce determined the market to be distorted.[51]
- Commerce should not use the price from Guizhou Tyre's actual import(s) as the synthetic rubber benchmark because there are better alternative benchmarks on the record, such as Guizhou Tyre's submitted monthly pricing information for its domestic synthetic rubber purchases (Tier 1), or quarterly prices for synthetic rubber in the United States, Japan, and France (Tier 2) as provided by Rubber Statistical Bulletin submitted by the petitioners, or Chinese import AUVs for HTS 4002.[52]

Petitioners:

[51] *See* Guizhou Tyre's Case Brief at 3-6.
[52] *Id*. at 6.

- Commerce's finding that China's synthetic rubber market was not distorted during the POR and its selection of a Tier 1 synthetic rubber benchmark, specifically as derived from Guizhou's actual import data, is supported by record data and consistent with Commerce's regulations and the case law.[53]

Commerce's Position:

We agree with the petitioners, and have continued to use Guizhou Tyre's actual imports of synthetic rubber in deriving the benchmark for synthetic rubber. Guizhou Tyre's arguments with respect to our market distortion analysis for synthetic rubber are unpersuasive. In the *Preliminary Results*, our analysis indicated that state-owned producers accounted for 32.32 percent of the synthetic rubber produced in China and that imports of synthetic rubber accounted for 28.6 percent of total consumption.[54] While this level of government involvement in the market is not insubstantial, we noted the absence of record information indicating government policies to restrict exports of the input and the relatively high-level imports as a portion of consumption in our preliminary finding that the domestic synthetic rubber market in China was not distorted during the POR. There is no other information on the record that would cause us to reconsider this finding.

Under such circumstances, Commerce normally uses prices stemming from actual transactions (Tier 1) in its calculations. However, in our *Preliminary Results*, we also found that the GOC did not act to the best of its ability to comply with our request for information regarding ownership and control of the producers that supplied inputs to respondents. As AFA, we preliminarily found that all of Guizhou Tyre's domestic suppliers were "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, we found Guizhou Tyre's domestic purchases of the input (which include purchases from suppliers that were determined to be "authorities") were not appropriate as Tier 1 benchmarks and resorted to prices of its actual imports as a Tier 1 benchmark.

In its case brief, Guizhou Tyre did not state why it believed that we should not use its actual import values as a benchmark or why the other benchmarks on the record were more appropriate. Guizhou Tyre's argument was limited to statements that the other benchmarks reflect "actual transactions in the country in question . . . stemming from . . . actual imports" or "a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question."[55] Although Guizhou Tyre argues that the preliminary finding of no

[53] *See* petitioners' rebuttal brief at 2-9.
[54] In comparison to 2014, the GOC decreased its involvement in the synthetic rubber market while imports increased their presence in the market in 2015. In 2014, the GOC production of synthetic rubber accounted for a larger proportion of Chinese production and consumption than imports. By 2015, the imports accounted for a larger proportion of Chinese production and consumption than GOC production. For additional details, *see* memorandum to Thomas Gilgunn, Program Manager, Office VII for Antidumping and Countervailing Duty Operations, "Analysis of Market Distortion in the Markets for Carbon Black, Nylon Cord, Synthetic Rubber and Natural Rubber," (Oct. 2, 2017) at 2.
[55] *See* Guizhou Tyre's Case Brief at 6.

market distortion is inconsistent with the distortion finding in the prior segment,[56] the record in this review demonstrates that the composition of the synthetic rubber market in China changed significantly between 2014 and 2015 – for example, the GOC decreased the volume of its synthetic rubber production by 8.7% while the volume of imports increased by 33.36% overall.[57] We found no evidence or arguments on the record that provides a basis to disregard the prices of Guizhou Tyre's actual imports of synthetic rubber as the benchmark or to move to other prices (whether monthly prices for domestic purchases or quarterly prices in other markets).

Comment 2: Whether Certain Benchmarks Used by Commerce in the Preliminary Results Double-Counted Freight and Import Duties

Guizhou Tyre and the GOC:

- If Commerce uses Chinese Customs import data as the benchmark for synthetic rubber, it should not add additional ocean freight as Chinese Customs import data is reported on a CIF basis and therefore already include the cost of ocean freight.[58]
- Commerce should adapt its benchmark to reflect the general condition that both domestic supply and import supply exists; therefore, Commerce should apply the supply ratio to the duty or freight adjustment.[59]

Petitioners:

- Commerce should not exclude or change the ocean freight and import duty adjustments to the benchmarks for synthetic rubber.[60]
- The regulation, 19 CFR 351.511(a)(2)(iv), explicitly states that Commerce "will adjust the comparison price" for a Tier 1 or Tier 2 benchmark "to reflect the price that a firm actually paid or would pay if it imported the product. This adjustment will include delivery charges and import duties."[61]
- The record contains reliable and usable information regarding market ocean freight charges from Maersk and delivery charges for imported inputs. Commerce should use such information in the final results calculations.[62]

Commerce's Position:

As discussed in Comment 1, Commerce will continue to use the monthly weighted-average of Guizhou Tyre's imports as a Tier 1 synthetic rubber benchmark. Guizhou Tyre purchased certain of its synthetic rubber on an FOB basis for which it reported its actual payments for

[56] *Id*. at 3-5.
[57] *See* the petitioners' Rebuttal Case Brief at 4.
[58] *See* Guizhou Tyre's Case Brief at 9-13 and GOC's Case Brief at 3-7.
[59] *See* GOC's Case Brief at 6-8.
[60] *See* Petitioners' Rebuttal Brief at 7-9.
[61] *Id.*
[62] *Id.*

ocean freight and import duties. Because we are not using the Chinese Customs import data, the double-counting concern raised with respect to import duties and freight is moot.

We also find that the use of a supply ratio would not be appropriate in light of the AFA finding that the domestic producers of the inputs purchased by Guizhou Tyre are authorities.[63] This finding means that we use only Guizhou Tyre's import prices for synthetic rubber, not its domestic prices, in deriving a Tier 1 benchmark. We note that using a supply ratio, which includes Guizhou Tyre's domestic purchases, to construct a weighted-average benchmark would distort the benchmark which includes duty and ocean freight payments, as applicable. Finally, we continue to include the company's actual ocean freight and import duties in its benchmark calculations for synthetic rubber and decline to apply the suggested ratio to these payments.

Comment 3: Whether Commerce Should Not Countervail Certain Synthetic Rubber Produced by Foreign Companies

Guizhou Tyre

- Commerce should not countervail synthetic rubber purchased from certain foreign companies.[64]

Commerce's Position:

Information on the record of this review indicates that one of Guizhou Tyre's Chinese suppliers obtained synthetic rubber from several foreign companies.[65] Under our practice, there is a financial contribution if the *producer* of the input is determined to be an "authority" within the meaning of section 771(5)(B) of the Act; the status of the intermediary supplier or trading company is irrelevant.[66] These foreign companies cannot be Chinese "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, in our final calculation of the benefit from the provision of synthetic rubber for LTAR, we are no longer examining these purchases by Guizhou Tyre of synthetic rubber produced outside China to calculate the benefit for this program.[67] However, we are including these purchases in our benchmark calculation for the final results.

[63] *See Preliminary Results* and accompanying Issues and Decisions Memorandum at 8-9.
[64] *See* Guizhou Tyre's Case Brief at 7-8.
[65] *See* Guizhou Tyre's Case Brief at 14-15.
[66] *See Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying Issues and Decision Memorandum at Comment 6.
[67] *See* Guizhou Tyre Final Calculation Memorandum.

Comment 4: Whether Commerce Should Find the Export Buyer's Credit Program Used by Guizhou Tyre

Guizhou Tyre:

- Commerce should accept the non-use declarations from its U.S. customers and find that Guizhou Tyre did not use the program, regardless of the GOC's lack of cooperation.[68]

GOC:

- Commerce should follow its past practice and find that declarations by a company's U.S. importers support a determination of non-use of the Export Buyer's Credit program.[69]

Petitioners:

- Guizhou Tyre's submissions are inadequate to establish its non-use of the program. Commerce properly applied AFA to determine that the program is countervailable and that Guizhou Tyre used and benefited from the program based on GOC's failure to cooperate to the best of its ability with Commerce's requests for information about the operation of the program.[70]

Commerce's Position:

For the final results, we continue to find that the record does not support finding non-use of the Export Buyer's Credit program by Guizhou Tyre. In the instant review and in prior proceedings in which we have examined this program, we have found that the EX-IM Bank, as the lender, is the primary entity that possesses the supporting information and documentation that are necessary for Commerce to fully understand the operation of the program, which is prerequisite to Commerce's ability to verify the accuracy of the respondents' claimed non-use of the program.[71] The GOC has not provided the requested information and documentation necessary for Commerce to develop a complete understanding of this program, *e.g.*, whether the EX-IM Bank limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million, and whether it uses third-party banks to disburse/settle Export Buyer's Credits. Such information is critical to understanding how Export Buyer's Credits flow to and from foreign buyers and the EX-IM Bank. Absent the requested information, the GOC's claims that the respondent companies did not use this program are not verifiable. Moreover, without a full

[68] *See* Guizhou Tyre's Case Brief at 13.
[69] *See* GOC's Case Brief at 13-14.
[70] *See* Petitioners' Rebuttal Brief at 10-13.
[71] *See, e.g., Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016), and accompanying Issues and Decision Memorandum at Comment 6; *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014), and accompanying Issues and Decision Memorandum at Comment 16.

understanding of the involvement of third party banks, the respondent companies' (and their customers') claims are also not verifiable.

As we discussed in the *Preliminary Results*, the GOC was uncooperative in this proceeding in not responding to our requests for additional information regarding the operations of this program (and, for that reason, we applied AFA).[72] Without this information, Commerce determined that the information provided by the GOC on the record about this program was incomplete and that our understanding of this program was inadequate. As such, we determined that the information provided by parties other than the GOC, *i.e.*, Guizhou Tyre, was insufficient for making a substantive determination. Therefore, while we did consider the customer certifications provided by Guizhou Tyre, without a complete and verifiable understanding of the program's operation, especially with regard to the involvement of third-party banks, the information provided by the Guizhou Tyre is also unverifiable.

Comment 5: Whether the GOC's Import Duty and VAT Exemptions on Imports of Raw Materials Program (Processing Trade Program) is Countervailable.

Guizhou Tyre:

- Chinese Customs "carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts."
- Guizhou Tyre had cancelled its Trade Processing Manual from 2012 during the POR. Also, Chinese Customs conducted on-site inspection to verify the accuracy of Guizhou Tyre's processing trade manual and the unit consumption.[73]
- Guizhou Tyre had actually paid import duties and VAT after the inspections in respect of those imported materials that were sold domestically as waste/leftover.[74]

GOC:

- Even if the GOC's response on this program was deficient, Commerce failed to meet its statutory obligation to promptly notify the GOC and permit the GOC to remedy any deficiency.[75]
- Commerce's determination, which amounts to a facts available result, and in many respects the application of an adverse inference, is without cause, and is further discredited by facts confirmed at the verification of Guizhou Tyre.[76]

[72] *See Preliminary Results* and accompanying Issues and Decisions Memorandum at 14-15.
[73] *See* Guizhou Tyre's Case Brief at 16-17.
[74] *Id*. at 18.
[75] *See* GOC's Case Brief at 10-13.
[76] *Id*. at 13-14.

Petitioners:

- Commerce properly determined that the program is countervailable because the information the GOC provided regarding this program failed to satisfy the regulatory criteria for non-countervailability.[77]
- Commerce was not obligated to provide the GOC with an opportunity to remedy deficiencies before reaching this determination because this determination was not based on facts otherwise available ("FA") or AFA.[78]
- Guizhou Tyre's submissions and the information provided at the verification of Guizhou Tyre also failed to establish that the criteria for non-countervailability were met.[79]

Commerce's Position:

We continue to find that the Import Duty Exemption on Import of Raw Materials Program (Processing Trade Program) provides a countervailable subsidy to Guizhou Tyre. Pursuant to 19 CFR 351.519(a)(4)(i), Commerce normally will find import duty exemptions under Processing Trade Programs to be not countervailable if the government in question has in place, and applies, a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export. In the *Preliminary Results*, Commerce found that the GOC did not have an effective system in place to confirm which inputs are consumed in the production of exported products and in what amounts, and that the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export.[80]

In this administrative review, we asked the GOC to explain how it determined the quantity of material (*e.g.*, rubber, nylon cord and carbon black) consumed in the production process and to provide sample documentation or reports to support its explanation. In response, the GOC stated that it determined the quantity of material consumed in the production process in accordance with the provisions of Measures of Customs of the People's Republic of China for the Supervision and Administration of Processing Trade Goods (Customs Measures).[81] However, the GOC did not specifically explain or document how it determined the quantity of rubber, nylon cord or carbon black consumed in the production process of OTR Tires. Moreover, it did not provide any documentation or reports to show how it determined the quantity of rubber, nylon cord or carbon black consumed by Guizhou Tyre or other tire producers in the production process.

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[77] *See* Petitioners' Rebuttal Brief at 13-14.
[78] *Id*. at 15-18.
[79] *Id*. at 18-20.
[80] *See Preliminary Results* and accompanying Issues and Decisions Memorandum at 35-36.
[81] *See* letter from the GOC, "Initial Questionnaire Response of the Government of the People's Republic of China Certain New Pneumatic Off-the-Road Tires from the People's Republic of China (C-570-913) (POR 2015)," (May 3, 2017) (GOC Initial Questionnaire Response) at 104-106.

Therefore, we continue to countervail the import duty exemptions under this program because the record does not support a finding that the GOC has an effective system in place to confirm which inputs are consumed in the production of exported products and in what amounts pursuant to 19 CFR 351.519(a)(4)(i). As noted above in the Analysis of Programs section, we have determined that there is insufficient information on the record to determine whether the exemption of VAT under this program is countervailable under 19 CFR 351.517, and will continue to examine this VAT component of the program in the next administrative review.

VIII. CONCLUSION

We recommend that you approve all of the above positions and adjust all related countervailable subsidy rates accordingly in the final results. If these positions are accepted, we will publish the final results in the *Federal Register*.

☒ ☐

Agree Disagree

4/9/2018

X

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance