C-570-017
Sunset Review
Public Document
AD/CVD I: MJK

October 29, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the First Expedited Five-Year Sunset Review of the Countervailing Duty Order on Certain Passenger Vehicles and Light Truck Tires from China

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I. SUMMARY

We analyzed the substantive response of the petitioner, a domestic interested party in this first sunset review of the countervailing duty (CVD) order[1] covering certain passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China).[2] We did not receive a substantive response from the Government of China (GOC) or any other respondent interested party. Accordingly, we conducted an expedited (120-day) sunset review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2).[3] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues for which we received a substantive response:

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[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 47902 (August 10, 2015) (*CVD Order*).
[2] *See* Petitioner's Letter, "Passenger Vehicle and Light Truck Tires from China, CVD order, First Sunset Review: Substantive Response of the USW," dated July 31, 2020 (Petitioner's Substantive Response).
[3] *See Procedures for Conducting Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005) (Commerce normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response.)

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy rates likely to prevail
3. Nature of the subsidies

II. BACKGROUND

On August 10, 2015, the Department of Commerce (Commerce) published the *Order* on passenger vehicle and light truck tires from China.[4] On July 1, 2020, we published the notice of initiation of the first sunset review of the *Order* on passenger tires from China, pursuant to section 751(c) of the Act.[5] Commerce received a notice of intent to participate from United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Workers Union, AFL-CIO, CLC (collectively, the petitioner), within the deadline specified in 19 CFR 351.218(d)(1)(i).[6] The petitioner claimed domestic interested party status under section 771(9)(D) of the Act as a certified union representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product.[7]

Commerce received a substantive response from the petitioner within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[8] We received no substantive response from any other domestic or interested parties in this proceeding and no hearing was requested.

On August 20, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.[9] As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order.*

III. SCOPE OF THE ORDER

The merchandise covered by the order is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by this order may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:

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[4] *See CVD Order*, 80 FR at 47902.
[5] *See Initiation of Five-Year (Sunset) Reviews*, 85 FR 39526 (July 1, 2020).
[6] *See* Petitioner's Letter, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Notice of Intent to Participate," dated July 16, 2020.
[7] *Id.*
[8] *See* Petitioner's Substantive Response.
[9] *See* Commerce's Letter, "Sunset Reviews Initiated on July 1, 2020," dated August 20, 2020.

P – Identifies a tire intended primarily for service on passenger cars

LT – Identifies a tire intended primarily for service on light trucks

Suffix letter designations:

LT – Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service.

All tires with a “P” or “LT” prefix, and all tires with an “LT” suffix in their sidewall markings are covered by this investigation regardless of their intended use.

In addition, all tires that lack a “P” or “LT” prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope.

Specifically excluded from the scope are the following types of tires:

(1) racing car tires; such tires do not bear the symbol “DOT” on the sidewall and may be marked with “ZR” in size designation;

(2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the Tire and Rim Association Year Book;

(3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;

(4) non-pneumatic tires, such as solid rubber tires;

(5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire’s sidewall are listed in Table PCT-1B (“T” Type Spare Tires for Temporary Use on Passenger Vehicles) of the Tire and Rim Association Year Book,

(b) the designation “T” is molded into the tire’s sidewall as part of the size designation, and,

(c) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed is 81 MPH or a “M” rating;

(6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following conditions:

(a) the size designation molded on the tire's sidewall is listed in the ST sections of the Tire and Rim Association Year Book,

(b) the designation "ST" is molded into the tire's sidewall as part of the size designation,

(c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is "For Trailer Service Only" or "For Trailer Use Only",

(d) the load index molded on the tire's sidewall meets or exceeds those load indexes listed in the Tire and Rim Association Year Book for the relevant ST tire size, and

(e) either

(i) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed does not exceed 81 MPH or an "M" rating; or

(ii) the tire's speed rating molded on the sidewall is 87 MPH or an "N" rating, and in either case the tire's maximum pressure and maximum load limit are molded on the sidewall and either

(1) both exceed the maximum pressure and maximum load limit for any tire of the same size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book; or

(2) if the maximum cold inflation pressure molded on the tire is less than any cold inflation pressure listed for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book, the maximum load limit molded on the tire is higher than the maximum load limit listed at that cold inflation pressure for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book;

(7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the Tire and Rim Association Year Book,

(b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is "Not For Highway Service" or "Not for Highway Use",

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the Tire and Rim Association Year Book, and the rated speed does not exceed

55 MPH or a "G" rating, and

(d) the tire features a recognizable off-road tread design.

The products covered by the order are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

IV. HISTORY OF THE ORDER

On June 18, 2015, Commerce published the final determination that countervailable subsidies are being provided to producers and exporters of passenger tires from China.[10] We calculated subsidy rates of: (1) 37.20 percent for GITI Tire (Fujian) Co., Ltd. and certain cross-owned companies (collectively, GITI); 20.73 percent for Cooper Kunshan Tire Co., Ltd. and certain cross-owned companies (collectively, Cooper); 100.77 percent for Shandong Yongsheng Rubber Group Co., Ltd. (Yongsheng), and 30.87 percent for all others.[11]

Commerce found the following programs to confer countervailable subsidies to GITI and Cooper in the *Final Determination*:[12]

1. Government Policy Lending
2. Export Seller's Credits from State-Owned Banks
3. Export Buyer's Credits from State-Owned Banks
4. Export Credit Insurance Subsidies
5. Export Credit Guarantees
6. Provision of Carbon Black, Nylon Cord, and Synthetic Rubber and Butadiene for Less Than Adequate Remuneration (LTAR)
7. Provision of Natural Rubber for LTAR
8. Provision of Electricity for LTAR
9. Provision of Land-Use Rights for Foreign Invested Enterprises (FIEs) for LTAR
10. Enterprise Income Tax Law, R&D Program

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[10] *See Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part,* 80 FR 34888 (June 18, 2015) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

[11] The individually-investigated exporters/producers are: (1) GITI Tire (Fujian) Co., Ltd., and its cross-owned affiliated companies: GITI Tire (China) Investment Company Ltd.; GITI Radial Tire (Anhui) Company Ltd.; GITI Tire (Hualin) Company Ltd.; GITI Steel Cord (Hubei) Company Ltd.; Anhui Prime Cord Fabrics Company Ltd.; GITI Tire Corporation; GITI Tire (Anhui) Company Ltd.; GITI Greatwall Tire (Yinchuan) Company Ltd.; GITI Steel Cord I (Anhui) Company Ltd.; Anhui Prime Cord Weaving Company Ltd.; and Anhui Prime Cord Twisting Company Ltd.; (2) Cooper Kunshan Tire Co., Ltd. and its cross-owned affiliated company, Cooper Chengshang (Shandong) Tire Co., Ltd.; and (3) Yongsheng.

[12] *See Final Determination* IDM.

11. Two Free, Three Half Program for FIEs
12. Import Tariff and VAT Exemptions for Imported Equipment
13. Special Fund for Energy-Saving Technology Reform
14. GITI Fujian Specific Subsidies – Subsidy for Export Credit Insurance; Financial Subsidy, 2011-2013; Enterprise Development Fund, 2012-2013; Key Enterprise Staffing Subsidy, 2013; Energy-Saving Technology Improvement Award, 2013
15. Fixed Asset Investment Subsidies
16. Tax Awards

In addition, Commerce relied on adverse facts available and found the following additional programs to provide countervailable subsidies to Yongsheng:[13]

1. Discounted Loans for Export-Oriented Enterprises
2. Provision of Land-Use Rights to Passenger Tire Producers for LTAR
3. Provision of Land -Use Rights to SOEs for LTAR
4. Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR
5. Income Tax Reduction for High or New Technology Enterprises (HNTEs)
6. Income Tax Reduction for Advanced-Technology FIEs
7. Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs
8. Income Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment
9. VAT Refunds for FIEs on Purchases of Chinese-Made Equipment
10. VAT Exemptions and Deductions for Central Regions
11. State Key Technology Renovation Project Fund
12. Famous Brands Program
13. Special Fund for Energy-Saving Technology Reform
14. The Clean Productions Technology Fund
15. Export Interest Subsidy Funds for Enterprises Located in Guangdong and Zhejiang Provinces
16. Funds for "Outward Expansion" of Industries in Guangdong Province
17. Provincial International Market Development Fund Grant
18. Provincial Import Discount Loan Subsidy
19. Subsidies for Companies Located in the Hefei Economic and Technology Development Zone
20. Anhui Province Subsidies for Foreign-Invested Enterprises (FIEs)
21. Hefei Municipal Export Promotion Policies
22. Subsidies for Companies Located in the Kunshan Economic and Technological Development Zone
23. Weihai Municipal Subsidies for the Automobile and Tire Industries
24. Subsidies for Companies Located in the Rongcheng Economic Development Zone

After issuing the *Final Determination*, Commerce received ministerial comments from the petitioner claiming that we did not select the highest non-*de minimis* rate for three tax programs and several grant programs. Commerce acknowledged that it did not select the highest non-*de*

[13] *See Final Determination* IDM.

minimis rates for the same or similar grant and tax programs in another China CVD proceeding. Accordingly, Commerce amended the *Final Determination* to correct the rate assigned to Yonghseng. Below are the amended net countervailable subsidy rates in the original investigation:[14]

Producers/Exporters	**Net Countervailable Subsidy Rate (percent)**
GITI Tire (Fujian) Co., Ltd. and certain cross-owned companies (collectively, GITI)	36.79
Cooper Kunshan Tire Co., Ltd. and certain cross-owned companies (collectively, Cooper)	20.73
Shandong Yongsheng Rubber Group Co., Ltd.	116.73
All Others	30.61

Following notification of an affirmative injury determination by the U.S. International Trade Commission (ITC), Commerce published the *Order* on August 10, 2015. Since the issuance of the *Order*, three administrative reviews have been completed and one is ongoing.[15] In each segment, Commerce found that Chinese producers/exporters of passenger tires continued to benefit from the subsidy programs provided by the GOC.

Subsidy Rates from the First Review[16]

Commerce calculated subsidy rates of 15.75 percent for GITI, 15.10 percent for Cooper, 114.48 percent for Zhongce Rubber Group Company Limited, (Zhongce), and 15.53 percent for non-selected companies under review. No new programs were identified in the first administrative review. Several programs that were assigned an AFA rate in the investigation received a revised rate in the review to reflect the rates calculated for respondents for the same program in this proceeding.

Subsidy Rates from the Second Review[17]

Commerce calculated subsidy rates of 15.47 percent for Cooper and 15.75 percent for Qingdao Sentury Tire Co. Ltd.

Subsidy Rates from the Third Review[18]

[14] *See CVD Order*, 80 FR at 47907.
[15] *See Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2014-2015,* 85 FR 19219 (May 2, 2018) (*PVLT Tires from China 1*) ; *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 28011 (June 17, 2019), and accompanying IDM (*PVLT Tires from China 2*); and *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 22718 (April 23, 2020) (*PVLT Tires from China 3*), and accompanying IDM.
[16] *See PVLT Tires from China 1.*
[17] *See PVLT Tires from China 2.*
[18] *See PVLT Tires from China 3.*

Commerce calculated subsidy rates of 7.15 percent for Cooper, 27.00 percent for Shandong Longyue Rubber Co., Ltd., and 20.05 for non-selected companies under review.

Changed Circumstances Review

Commerce has completed one changed circumstances review in which it found that (1) Sailun Group Co., Ltd. (Sailun Group) is the successor-in-interest to Sailun Jinyu Group Co., Ltd. (Sailun Jinyu); (2) Sailun (Dongying) Tire Co., Ltd. (Sailun Dongying) is the successor-in-interest to Shandong Jinyu Industrial Co., Ltd. (Shandong Jinyu); and (3) Sailun Group (Hong Kong) Co., Limited. (Sailun HK) is the successor-in-interest to Sailun Jinyu Group (Hong Kong) Co., Limited. (Sailun Jinyu HK). As a result, Commerce determined that Sailun Group, Sailun Dongying and Sailun HK are entitled to the antidumping (AD) and CVD cash deposit rates of Sailun Jinyu, Shandong Jinyu and Sailun Jinyu HK, respectively.[19]

New Shipper Review

Commerce initiated a new shipper review (NSR) for the December 1, 2014 through January 31, 2016 period of review.[20] The NSR covered one producer/exporter of subject merchandise, Shandong Xinghongyuan Tire Co., Ltd. (SXT). However, Commerce decided to rescind this review because SXT's request for an NSR contained an inaccurate certified statement that SXT was not affiliated with any Chinese exporter or producer that exported subject merchandise to the United States during the POI and, therefore, SXT had not satisfied the statutory and regulatory requirements to request an NSR.[21]

Scope Inquiries

Commerce completed four scope inquiries. On March 31, 2016, American Omni and Unicorn Tire requested a ruling to determine whether certain racing tires that it imports to the United States from China are outside the scope of the AD and CVD passenger tires orders.[22] On May 27, 2016, Commerce determined that racing tires which contain a "DOT" symbol but are not of a size listed in the passenger vehicle or light truck section of the Tire and Rim Association Year Book (TRA Year Book), which American Omni Trading Company LLC (American Omni) and Unicorn Tire Corporation (Unicorn Tire) imports, are outside the scope of the AD and CVD orders on passenger tires from China.[23]

On January 10, 2018 Yokohama Corporation of North America, Hangzhou Yokohama Tire Co., Ltd. and Yokohama Rubber Company, Ltd. (collectively, Yokohama) submitted a scope ruling

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[19] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Changed Circumstances Reviews,* 85 FR 14638 (March 13, 2020).
[20] *See Passenger Vehicle and Light Truck Tires from the People's Republic of China: Initiation of Countervailing Duty New Shipper Review: Initiation of Countervailing Duty New Shipper Review; 2014-2016*, 81 FR 36262 (June 6, 2016).
[21] *See Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Rescission of 2014-2016 Countervailing Duty New Shipper Review,* 82 FR 28819 (June 26, 2017).
[22] *See* American Omni and Unicorn Tire's Letter, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Request for Scope Ruling," dated March 31, 2016 (American Omni Scope Request).
[23] *See* Memorandum, "Antidumping and Countervailing Duty Orders on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Scope Ruling -- American Omni and Unicorn Tire," dated May 27, 2016.

request that Commerce determine whether certain tires manufactured in China and imported into the United States by Yokohama are outside the scope of the AD and CVD orders. On May 18, 2018, Commerce found that Yokohama tires (part number 110277401) which lack a sidewall DOT stamp, are not subject to the scope of the AD and CVD orders.[24]

On February 27, 2018, Cheng Shin Rubber USA, Inc., doing business as Maxxis International (Maxxis), requested a scope ruling to determine whether certain spare tires imported into the United States from China are outside the scope of the AD and CVD orders. On May 1, 2018, Commerce found, in accordance with 19 CFR 351.225(k)(1), that tires listed in the new Table PCT-1R of the 2017 Year Book and which otherwise satisfy parts (b) and (c) of the spare tire exclusion (5), including the radial spare tires imported by Maxxis, are outside the scope of the AD and CVD orders.

On April 12, 2018, GITI submitted a similar request for a scope ruling to determine whether certain spare tires, manufactured in China and imported to the United States by GITI, are outside the scope of the AD and CVD orders. On July 11, 2018, Commerce found that tires listed in the new Table PCT-1R of the 2017 Year Book and otherwise satisfy parts (b) and (c) of the spare tire exclusion in the scope of the Orders, including the radial spare tires imported by GITI, are outside the scope of the AD and CVD orders.[25]

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce conducted this sunset review to determine whether revocation of the *Order* would likely lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, Commerce shall consider: (1) the net countervailable subsidy determined in the investigation and any subsequent reviews, and (2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, Commerce shall provide the ITC with the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, Commerce shall provide the ITC with information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM).

VI. DISCUSSION OF THE ISSUES

Below we address the comments of the domestic interested parties.

Comment 1: Likelihood of Continuation or Recurrence of a Countervailable Subsidy

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[24] *See* Memorandum, "Antidumping and Countervailing Duty Orders on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Scope Request from Yokohama Corporation of North America, Hagzhou Yokohama Tire Company, Ltd. and Yokohama Rubber Company, Ltd." dated May 18, 2018.

[25] *See* Memorandum, "Antidumping and Countervailing Duty Orders on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Scope Request from Giti Tire (USA) Ltd.," dated July 11, 2018.

Interested Party Comments[26]

The petitioner argues that revocation of the *Order* would lead to a continuation or recurrence of the countervailable subsidy because programs that were found to be countervailable in the investigation have either been found to continue to be used by Chinese producers or have not been terminated, and Commerce has found that Chinese producers/exporters continue to receive net countervailable subsidies. The petitioner contends that, in the 2017 administrative review, the last completed review, Commerce found that the following programs continue to benefit the selected respondents: Government Policy Lending, Export Buyer's Credits from State-Owned Banks, Provision of Carbon Black for LTAR, Provision of Nylon Cord for LTAR, Provision of Synthetic Rubber and Butadiene for LTAR, Provision of Land-Use Rights for FIEs for LTAR, Provision of Electricity for LTAR, Enterprise Income Tax Law-R&D Program, Import Tariff and VAT Exemptions for Imported Equipment, Special Fund for Energy-Saving Technology Reform, and Other Subsidy Programs. Furthermore, the petitioner claims that a number of additional programs that were not used by exporters subject to this review continue to exist including those countervailed in the investigation for Yongsheng. Finally, the petitioner emphasizes that the *Order* should not be revoked because producers/exporters are continuing to receive net countervailable subsidies. Therefore, the petitioner concludes that the *Order* should not be revoked.

Commerce's Position:

To determine the likelihood of continuation or recurrence of a countervailable subsidy, section 752(b)(1) of the Act directs Commerce to consider the net countervailable subsidy determined in the investigation and subsequent reviews and whether there have been any changes in a program found to be countervailable that are likely to affect that net countervailable subsidy. According to the SAA, Commerce will consider the net countervailable subsidies in effect after the issuance of an order and whether the relevant subsidy programs have been continued, modified, or eliminated.[27] The SAA further states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.[28] The continued existence of programs that have not been used, and have not been terminated without residual benefits or replaced, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.[29] Where a subsidy program is found to exist, Commerce normally will determine that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.[30]

Consistent with prior determinations, two conditions must be met in order for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: (1) the

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[26] *See* Petitioner's Substantive Response at 9-10.
[27] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol. 1 (1994) at 888.
[28] *Id.*
[29] *See*, *e.g.*, *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010), and accompanying IDM at Comment 1.
[30] *Id.*

program must be terminated; and (2) any benefit stream must be fully allocated.[31] In order to determine whether a program has been terminated, we will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program. Commerce normally expects a program to be terminated by means of the same legal mechanism used to institute it. Where a subsidy is not bestowed pursuant to a statute, regulation or decree, Commerce may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence and was not granted as part of a broader, government program.

As explained above, Commerce completed three administrative reviews of the *Order* since the investigation. In each of these reviews, Commerce found that the Chinese producers of passenger tires continued to receive countervailable subsidies from programs identified in the investigation. Moreover, no party submitted documentation demonstrating that the countervailable programs have expired or have been terminated. Consequently, Commerce continues to find that all countervailable programs referenced in Section III above continue to exist and are used by Chinese producers and exporters of passenger tires.[32] Given the continued existence of programs found to provide countervailable benefits, Commerce finds that a countervailable subsidy would be likely to continue or recur if the *Order* were revoked.[33]

Comment 2: Net Countervailable Subsidy Rates Likely to Prevail

Interested Party Comments

The petitioner contends that Commerce should follow the instructions set forth in section 752(b)(3) of the Act and the SAA and select the net countervailable subsidy rates that were determined in the original investigation because these are the only calculated rates that reflect the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place.[34] Moreover, the petitioner argues that no companies have been revoked from the order based on zero or *de minimis* rates. Additionally, the petitioner claims that the rate for Zhongce should be included in the rates likely to prevail because the *Sunset Policy Bulletin* allows Commerce to adjust the facts available rate found in the original investigation to reflect

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[31] *See, e.g.*, *Non-Oriented Electrical Steel from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order*, 85 FR 11339 (February 27, 2020), and accompanying IDM at 6; *see also Certain Pasta from Italy: Final Results of the Expedited Fourth Sunset Review of the Countervailing Duty Order*, 83 FR 62839 (December 6, 2019), and accompanying IDM at 11; *Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006), and accompanying Preliminary Decision Memorandum at 5-7, unchanged *in Corrosion-Resistant Carbon Steel Flat Products from France: Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006).

[32] *See, e.g.*, *Sulfanilic Acid from India; Final Results of Expedited Sunset Review of Countervailing Duty Order*, 76 FR 33243 (June 8, 2011); *see also Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010).

[33] *See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18874-75 (April 16, 1998) (*Sunset Policy Bulletin*); *see also Investigation Final*; *Section 129 Determination*, 81 FR at 37181-82.

[34] *See* Petitioner's Substantive Response at 11.

increases in the facts available rates found in a subsequent review.[35] Therefore, the petitioner argues that Commerce should rely on the following net countervailable subsidy rates:[36]

Producer/Exporter	Net Countervailable Subsidy Rate
GITI Tire (Fujian) Co., Ltd.	36.79 percent
Cooper Kunshan Tire Co., Ltd.	20.73 percent
Shandong Yongsheng Rubber Group Co., Ltd.	116.33 percent
Zhongce Rubber Group Company Limited	114.48 percent
All Others	30.61 percent

Commerce's Position:

Consistent with the SAA and legislative history, Commerce normally will provide to the ITC the net countervailable subsidy rates that were determined in the investigation as these are the rates likely to prevail if the order is revoked because these are the only calculated rates that reflect the behavior of exporters and foreign governments without the discipline of the order in place.[37] Section 752(b)(1)(B) of the Act provides, however, that Commerce also will consider whether any change in the program which gave rise to the net countervailable subsidy determination in the investigation has occurred that is likely to affect the net countervailable subsidy rate. Therefore, although the SAA provides that Commerce normally will select a rate from the investigation, this rate may not be the most appropriate if the rate was derived from countervailable subsidy programs found in subsequent reviews to be terminated, there has been a program-wide change, or the rate does not include a program or programs found to be countervailable in subsequent reviews.[38]

Because we have not uncovered additional countervailable programs in subsequent reviews and no program from the investigation has been terminated, Commerce is providing the ITC with the rates found in the original investigation. We disagree with the petitioner that rates for Zhongce should be included in these final results. To determine the rates likely to prevail if the order was revoked, Commerce only examines the rates that respondents in the original investigation received. We increase these rates by the rates of new programs found countervailable in subsequent reviews and subtract the rates of terminated programs.[39] Consistent with section 752(b)(3) of the Act, Commerce will provide to the ITC the net countervailable subsidy rates shown in the section entitled "Final Results of Review."

Comment 3: Nature of the Subsidies

In accordance with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of the subsidy programs, and whether these

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[35] *See* Petitioner's Substantive Response at 11-12. The rates cited by the petitioner are the cash deposit rates.
[36] *Id.* at 10.
[37] *See* SAA at 890; *see also* H.R. Rep. No. 103-826 (1994) at 64.
[38] *See*, *e.g.*, *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Expedited Second Sunset Review,* 75 FR 62101 (October 7, 2010), and accompanying IDM at Comment 2.
[39] *See Certain Pasta from Italy: Final Results of the Expedited Fourth Sunset Review of the Countervailing Duty Order*, 83 FR 62838 (December 6, 2018), and accompanying IDM at 13-16.

programs constitute subsidies that fall within the meaning of Article 3 or Article 6.1 of the SCM Agreement. We note that Article 6.1 of the SCM expired effective January 1, 2000.

Article 3 Subsidies

The following programs fall within the definition of an export subsidy under Article 3.1 of the SCM, which states that the following subsidies shall be prohibited: (a) subsidies contingent, in law or in fact whether solely or as one of several other conditions, upon export performance, and (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

Loan Programs

1. Export Seller's Credits from State-Owned Banks (export – contingent)
2. Export Buyer's Credits from State-Owned Banks (export-contingent)
3. Export Credit Guarantees (export-contingent)

Insurance Programs

4. Export Credit Insurance Subsidies (export-contingent)

Inputs for Less-Than-Adequate Remuneration Programs

5. Provision of Land-Use Rights for FIEs for LTAR (export-contingent)

Article 6.1 Subsidies

The following programs do not fall within the meaning of Article 3.1 of the SCM. However, they could be subsidies described in Article 6.1 of the SCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM. The subsidies could also fall within the meaning of Article 6.1 if they constitute debt forgiveness, a grant to cover debt repayment, or are subsidies to cover operating losses sustained by an industry or enterprise:

Loan Programs

1. Government Policy Lending

Inputs for LTAR

2. Provision of Carbon Black, Nylon Cord, and Synthetic Rubber and Butadiene for LTAR
3. Provision of Natural Rubber for LTAR
4. Provision of Electricity for LTAR

Income Tax Programs

5. Enterprise Income Tax Law, R&D Program
6. Two Free, Three Half Program for FIEs
7. Financial Subsidy, 2011-2013

Other Tax Programs

8. Import Tariff and VAT Exemptions for Imported Equipment
9. Tax Awards

Grant Programs

10. Special Fund for Energy-Saving Technology Reform
11. Enterprise Development Fund, 2012-2013
12. Key Enterprise Staffing Subsidy
13. Energy-Saving Technology Improvement Award, 2013
14. Fixed Asset Investment Subsidies

VII. FINAL RESULTS OF SUNSET REVIEW

Commerce determines that revocation of the *Order* would likely lead to a continuation or recurrence of a countervailable subsidies at the rates listed below:

Producer/Exporter	**Net Countervailable Subsidy Rate (percent)**
GITI Tire (Fujian) Co., Ltd.	36.79
Cooper Kunshan Tire Co., Ltd.	20.73
Shandong Yongsheng Rubber Group Co., Ltd.	116.73
All Others	30.61

VIII. RECOMMENDATION

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish these final results of this expedited sunset review in the *Federal Register* and notify the ITC of our findings.

☒	☐
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Agree	Disagree

10/29/2020

X

Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance