

gas-fired power generation turbine components (combustor baskets and transition pieces; up to 1,800 total units annually) at the MPSA plant (306 employees/15 acres/80,000 sq.ft. of production area) in Orlando, Florida (Board Order 1234, 67 FR 45456, 7–9–2002). The applicant currently requests that the scope of FTZ manufacturing authority be extended to include an additional 81,500 square feet of production area to accommodate additional production capacity (new total would be 161,500 sq.ft.), which will be added with a new facility within the existing boundaries of Subzone 42A. The new capacity would be used to manufacture and repair additional steam and gas turbine components. MPSA's existing FTZ authority for the manufacture of combustor baskets and transition pieces would remain unchanged.

Under the proposal, MPSA would manufacture stainless steel steam turbine blades and vanes (up to 2,200 total units per year) for the U.S. market and export. Activity would involve receiving foreign-origin semi-finished forgings (classified under HTSUS 8406.81, 8406.90) that would be machined, finished, and coated to produce finished steam turbine blades and vanes. Some 70 percent of the finished blades and vanes will be exported.

Expanded FTZ procedures would continue to exempt MPSA from customs duty payments on the foreign-origin inputs used in production for export. On domestic shipments, the company would be able to defer duty payments on the foreign inputs until they would be entered for U.S. consumption. FTZ procedures may also result in increased logistical/supply chain efficiencies for MPSA's distribution operations.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. The closing period for receipt of comments is April 21, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 5, 2008.

A copy of the application will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, Suite 100, 315 East Robinson Street, Orlando, FL 32801; and, at the Office of the Foreign–Trade

Zones Board's Executive Secretary at the address listed above. For further information, contact Pierre Duy, examiner, at: pierre\_duy@ita.doc.gov, or (202) 482–1378.

Dated: February 6, 2008.

**Andrew McGilvray,**

*Executive Secretary.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–912]

#### **Certain New Pneumatic Off-The-Road Tires From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination**

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

**EFFECTIVE DATE:** February 20, 2008.

**SUMMARY:** We preliminarily determine that certain new pneumatic off-the-road tires (“OTR tires”) from the People's Republic of China (“PRC”) are being, or are likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 733 of the Tariff Act of 1930, as amended (“the Act”). The estimated margins of sales at LTFV are shown in the “Preliminary Determination” section of this notice. Pursuant to requests from interested parties, we are postponing the final determination and extending the provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

**FOR FURTHER INFORMATION CONTACT:** Laurel LaCivita or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243 or 482–0650, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Case History**

On June 18, 2007, Titan Tire Corporation, a subsidiary of Titan International, Inc. (“Titan”), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (“USW”) (collectively, “Petitioners”),

filed a petition in proper form on behalf of the domestic industry and workers producing OTR tires, concerning imports of OTR tires from the PRC (“Petition”).

The Department of Commerce (“the Department”) initiated this investigation on July 30, 2007.<sup>1</sup> In the *Notice of Initiation*, the Department applied a process by which exporters and producers may obtain separate-rates in non-market economy (“NME”) investigations. The process requires exporters and producers to submit a separate-rate status application (“SRA”).<sup>2</sup> However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities) has not changed. The SRA for this investigation was posted on the Department's Web site <http://ia.ita.doc.gov/ia-highlights-and-news.html> on August 10, 2007. The due date for filing an SRA was September 28, 2007.

On July 30, 2007, the Department issued quantity and value (“Q&V”) questionnaires to 94 companies. In addition, on July 30, 2007, the Department requested the assistance of the Government of the PRC (through the Ministry of Commerce) in transmitting the Department's Q&V questionnaire to all companies that manufacture and export subject merchandise to the United States, as well as to manufacturers that produce the subject merchandise for companies that were engaged in exporting subject merchandise to the United States during the period of investigation (“POI”).

From August 8 to August 20, 2007, 30 exporters of the subject merchandise filed timely responses to the Department's Q&V questionnaire.<sup>3</sup> One

<sup>1</sup> See *Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-The-Road Tires From the People's Republic of China*, 72 FR 43591 (August 6, 2007) (“*Notice of Initiation*”).

<sup>2</sup> See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-market Economy Countries (April 5, 2005) (*Policy Bulletin* 05.1), available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

<sup>3</sup> Aeolus Tyre Co., Ltd (“Aeolus”), Double Coin Holding Ltd. (“Double Coin”), Double Happiness Tyre Industries Corp., Ltd. (“Double Happiness”), Full-World International Trading Co., Ltd. (“Full-World”), GITI Tire (China) Investment Company Ltd. (“GITI”), Guizhou Tyre Co., Ltd. (“Guizhou Tyre”), Hebei Starbright Co., Ltd. (“Starbright”), Jiangsu Feichi Co., Ltd. (“Feichi”), KS Holding Company Limited (“KS Holding”), Laizhou Xiongying Rubber Industry Co., Ltd. (“Xiongying”), Oriental Tyre Technology Limited (“Oriental”), Qingdao Etyre International Trade Co., Ltd. (“Etyre”), Qingdao Hengda Tyres Co., Ltd. (“Hengda”), Qingdao Milestone Tyre Co., Ltd. (“Milestone”), Qingdao Qihang Tyre Co., Ltd.

of these companies, GITI, reported that it made no sales to the United States during the POI. The Government of the PRC did not respond to the Department's letter requesting assistance in transmitting the Q&V questionnaire to procedures and exporters of the subject merchandise in the PRC.

On August 20, 2007, Petitioners; Valmont Industries, Inc. ("Valmont"), Carlisle Tire & Wheel ("Carlisle"), Bridgestone Holding, Inc. and its subsidiary, Bridgestone Firestone North American Tire, LLC ("Bridgestone"), and Agri-Fab, Inc. ("Agri-Fab") (collectively "domestic interested parties"); and Guizhou Tyre submitted comments on the scope of the investigation. In addition, Aeolus requested to be a mandatory respondent in this investigation. Alternatively, Aeolus requested that if it were not selected as a mandatory respondent, that it be accepted as a voluntary respondent pursuant to section 782(a) of the Act and 19 CFR 351.204(d). On August 27, 2007, Petitioners, Bridgestone, and Guizhou Tyre filed scope rebuttal comments. In addition, the Department returned Qingdao Aonuo Tyre Co. Ltd.'s ("Aonuo's") August 8, 2007, Q&V submission because Aonuo did not submit the final proprietary and public versions the following business day as required by the Department's regulations. See 19 CFR 351.303(c)(2).

On August 27, 2007, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of OTR tires from the PRC.<sup>4</sup> Additionally, on August 31, 2007, the Department provided interested parties to this proceeding the opportunity to comment on the Department's proposed product

characteristic reporting criteria and matching hierarchy.

On September 4, 2007, Aonuo attempted to file its Q&V information for the second time. On September 5, 2007, the Department returned the August 27, 2007, Q&V submission of Landmax International Co., Ltd. because it was not timely filed. In addition, per the Department's instructions, Starbright and TUTRIC filed amended Q&V responses, disaggregating their Q&V information, but continuing to argue that they should be treated as a single entity for the purposes of this investigation. On September 10, 2007, the Department returned Aonuo's September 4, 2007, Q&V submission because it was not timely filed. On September 14, 2007, Petitioners, Bridgestone, Guizhou Tyre, GPX International Tire Corporation ("GPX"), a U.S. Importer of subject merchandise, Starbright and TUTRIC filed comments on the proposed product characteristics criteria. In addition, Petitioners and Guizhou Tyre filed rebuttal comments on the scope of the investigation. On September 17, 2007, GPX provided comments on the affiliation and collapsing of Starbright and TUTRIC. On September 21, 2007, GPX requested that the Department select Starbright and TUTRIC as mandatory respondents. Bridgestone also provided comments on respondent selection. From September 24 through 27, 2007, Petitioners, Bridgestone, Guizhou Tyre, GPX, Starbright and TUTRIC filed rebuttal comments concerning product characteristics.

From September 25 to 28, 2007, 28 producers and/or exporters of OTR tires from the PRC<sup>5</sup> filed timely SRAs.

On October 1, 2007, the Department issued its respondent selection memorandum, selecting Guizhou Tyre, Starbright, TUTRIC and Xugong as mandatory respondents in this investigation.<sup>6</sup> On October 2, 2007, the Department issued an antidumping duty questionnaire to the four above-named mandatory respondents. On October 3, 2007, Aeolus withdrew its August 20, 2007, request to be a voluntary respondent in this investigation. On

October 5, 2007, Double Happiness amended its SRA.

On October 9, 2007, Petitioners filed comments on Guizhou Tyre's SRA and a document containing supplementary information entitled "First Submission of Facts for the Record." On October 11, 2007, Petitioners and Bridgestone filed comments on the SRAs of the mandatory respondents and the other separate-rate applicants. In addition, on that date, Xiongying waived its rights to future service of all public and proprietary submissions in this investigation, with the exception of case briefs and rebuttal briefs. On October 12, 2007, the Government of the PRC ("GOC") entered an appearance in this investigation. On October 15, 2007, Petitioners filed comments on TUTRIC's SRA.

On October 25, 2007, the Department requested that the Office of Policy provide a list of surrogate countries for this investigation.<sup>7</sup> On October 26, 2007, the Office of Policy issued its list of surrogate countries<sup>8</sup> and Guizhou Tyre, Starbright, TUTRIC and Xugong submitted section A responses ("AQR"). Additionally, on October 26, 2007, the Department issued letters requesting comments on the appropriate surrogate country to use in this investigation and for publicly available information to value factors of production ("FOP").

On November 5, 2007, Petitioners submitted comments objecting to the consolidated response filed by Starbright and TUTRIC. On November 6, 2007, Petitioners and Bridgestone separately filed comments on Guizhou Tyre's SRA and Bridgestone filed comments on Xugong's SRA. On November 8 and 9, 2007, Petitioners filed comments on Xugong's and TUTRIC's AQR respectively.

On November 9, 2007, Petitioners, Bridgestone, Starbright and TUTRIC filed comments on the selection of a surrogate country. Petitioners and Bridgestone specified India as the most appropriate surrogate country, whereas Starbright and TUTRIC identified Sri Lanka as the most appropriate surrogate country.

On November 13 and 14, 2007, Bridgestone provided comments on the

("Qihang"), Qingdao Qizhou Rubber Co., Ltd. ("Qizhou"), Qingdao Sinorient International Ltd. ("Sinorient"), Rodeo International Trading Co., Ltd. ("Rodeo"), Shandong Huitong Tyre Co., Ltd. ("Huitong"), Shandong Jinyu Tyre Co., Ltd. ("Jinyu"), Shandong Taishan Tyre Co., Ltd. ("Taishan"), Shandong Wanda Boto Tyre Co., Ltd. ("Wanda Boto"), Shandong Xingyuan International Trading Co., Ltd. ("Xingyuan"), Shifeng Double-Star Tyre Co., Ltd. ("Double-Star"), Techking Tires Limited (Techking Enterprise (H.K.) Co., Ltd.) ("Techking"), Tianjin United Tire & Rubber International Co., Ltd. ("TUTRIC"), Triangle Tyre Co., Ltd. ("Triangle Tyre"), Wendeng City Sanfeng Tyre Co., Ltd. ("Sanfeng"), Xuzhou Xugong Tyre Company Limited ("Xugong") and Zhao Yuan Leo Rubber Co., Ltd. ("Leo").

<sup>4</sup> See Investigation Nos. 701-TA-448 and 731-TA-1117 (Preliminary): Certain Off-the-Road Tires From China, 72 FR 50699 (September 4, 2007).

<sup>5</sup> Aeolus, Double Coin, Double Happiness, Full-World, Guizhou Tyre, Starbright, Feichi, KS Holding, Xiongying, Oriental, Etyre, Hengda, Milestone, Qihang, Qizhou, Sinorient, Huitong, Jinyu, Taishan, Wanda Boto, Xingyuan, Double-Star, Techking, TUTRIC, Triangle Tyre, Sanfeng, Xugong, and Leo.

<sup>6</sup> See Memorandum to the File, "Selection of Respondents for the Antidumping Investigation of Certain New Pneumatic Off-The-Road Tires from the People's Republic of China" (October 1, 2007) ("Respondent Selection Memorandum"). See also "Selection of Respondents" section below.

<sup>7</sup> See Memorandum to Ron Lorentzen, Director, Office of Policy, "Less-Than-Fair-Value Investigation of Certain New Pneumatic Off-The-Road Tires ('OTR tires') from the People's Republic of China ('PRC'), Surrogate Country Selection List," (October 25, 2007).

<sup>8</sup> See Memorandum from Ron Lorentzen, Director, Office of Policy, "Antidumping Duty Investigation of Certain New Pneumatic Off-The-Road Tires ('OTR tires') from the People's Republic of China ('PRC'): Request for a List of Surrogate Countries," (October 26, 2007) ("Office of Policy Surrogate Countries Memorandum").

combined AQR for Starbright and TUTRIC. Petitioners provided comments on Starbright's and TUTRIC's combined AQR on November 13, 2007.

On November 15, 2007, Petitioners requested that the Department extend the deadline for the preliminary determination by 50 days until February 5, 2008. In that same letter, Petitioners also requested that the Department similarly extend the deadline for filing critical circumstances and targeted dumping allegations.

On November 19, 2007, Petitioners and Bridgestone filed rebuttal comments on Starbright's and TUTRIC's surrogate-country-selection submission. Guizhou filed its sections C and D responses ("CQR" and "DQR," respectively) on November 21, 2007. Starbright, TUTRIC and Xugong also filed their CQRs and DQRs on November 23, 2007.

On November 30, 2007, as instructed by the Department, Starbright submitted a revised section C database containing only Starbright's constructed export price ("CEP") sales to the United States. In addition, Starbright explained why the narrative section C response originally submitted on behalf of both Starbright and TUTRIC is equally valid and complete for Starbright alone, without further explanation, allocations or exhibits. On December 10, 2007, Guizhou Tyre amended its surrogate value information.

On December 13, 2007, Petitioners requested that the Department direct Starbright and TUTRIC to submit the business-proprietary versions of the responses concerning affiliation filed in the companion countervailing duty ("CVD") investigation of OTR tires. On December 17, 2007, Petitioners, Bridgestone, Starbright and TUTRIC filed rebuttal comments on the surrogate value submissions.

The Department issued a supplemental questionnaire covering Xugong's AQR, CQR and DQR on December 18, 2007. The next day, Bridgestone filed an explanation of the methodology that it used to prepare Exhibit 2 of its December 4, 2007, comments on the Section C and D responses of Guizhou Tyre, Starbright and TUTRIC.

On December 26, 2007, the Department postponed the deadline for the preliminary determination for 50 days until February 5, 2008.<sup>9</sup>

On January 4, 2008, Guizhou Tyre submitted certain information contained in its SRA response and AQR on the

public record of this investigation. On January 9, 2008, Xugong filed its first supplemental questionnaire response ("SQR").

On January 10, 2008, Starbright and TUTRIC filed factual information and legal analysis in support of their affiliation claims. Additionally, on January 10 and 11, 2008, the Department issued supplemental questionnaires to certain SRA applicants.

On January 14, 2008, Guizhou Tyre and TUTRIC filed their respective SQRs. The Department issued a second supplemental questionnaire to Xugong on January 15, 2008. On January 16, 2008, TUTRIC requested an extension of the deadline for filing a corrected version of its January 14, 2008, submission, and Starbright filed its SQR. The Department granted TUTRIC's extension request on the same day. However, on January 17, 2008, the Department also rejected Exhibit 1 of Starbright's January 16, 2008, SQR (which had been submitted pursuant to 19 CFR 351.303(c)(2)) and Exhibit 1 of TUTRIC's January 14, 2008, SQR, granting each company a one-day extension to file a revised version of Exhibit 1 which conformed to the request for information in the Department's December 21, 2007, supplemental questionnaire. The Department explained that Starbright and TUTRIC could include any additional information from Exhibit 1 that they deemed directly relevant to the issue of affiliation.<sup>10</sup>

On January 17, 2008, Starbright submitted its SQR, and the Department issued a third supplemental questionnaire to Xugong. On January 18, 2008, Starbright and TUTRIC filed a second copy of their January 10, 2008, affiliation comments, which contained the pages that Starbright and TUTRIC requested that the Department insert in their January 11, 2008, letter. In addition, Starbright and TUTRIC each submitted revised copies of Exhibit 1 of their respective SQRs in accordance with the instructions in the Department's January 17, 2008, memorandum to the file.

On January 18, 2008, Xugong notified the Department by phone that it had inadvertently served Petitioners with all the copies of its SQR that were due to

the Department that day, and requested an extension of the deadline to file its SQR for the SRA. The Department agreed and instructed Xugong to file a letter explaining this and requesting the extension on the next business day, which Xugong did. On January 23, 2008, Xugong submitted a second request for an extension along with a more detailed explanation of the January 18, 2008, filing error. At that time, Xugong also filed a corrected version of its section C database and corrected information provided in its SQR. In addition, Starbright and TUTRIC filed comments on Bridgestone's targeted dumping allegation.

On January 24, 2008, Full-World, Huitong, KS Holding, Qizhou, Triangle and Wanda Boto submitted timely responses to the Department's supplemental SRA questionnaires. On January 25, 2008, Guizhou Tyre submitted its second supplemental response. On January 28, 2008, Techking, Hengda, Sinorient and Etyre responded to the Department's supplemental SRA questionnaire. On January 28, 2008, (six days prior to the statutory deadline for issuing the preliminary LTFV determination) the GOC filed pre-preliminary determination comments arguing that the Department should adjust the U.S. prices calculated in the antidumping duty case for both export and domestic subsidies found to be countervailable in the companion CVD investigation. In that same submission, the GOC also requested that the Department revisit its determination from the AD proceeding on Chinese CFS<sup>11</sup> not to modify the existing NME AD methodology and made a general assertion that the Department should "reevaluate it {sic} current AD methodology as applied to China so that it fairly and accurately reflects the realities of the Chinese economy."<sup>12</sup> However, the GOC did not ask that we formally reevaluate the PRC's status as a non-market economy. Therefore, based on our decision in CFS,<sup>13</sup> we have not reevaluated our AD methodologies with respect to this proceeding.

On January 29, 2008, Guizhou Tyre filed its pre-preliminary determination comments. We received Guizhou Tyre's January 29 comments too late to consider for the preliminary

<sup>9</sup> See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 72 FR 72988 (December 26, 2007).

<sup>10</sup> See Memorandum from Charles Riggle, Program Manager, to the File "Less-than-Fair-Value Investigation of Certain New Pneumatic Off-the-Road Tires ("OTR tires") from the People's Republic of China ("PRC"): Telephone Call with Counsel for Hebei Starbright Tire Co. ("Starbright"), and Tianjin United Tire & Rubber International Co., Ltd. ("TUTRIC") Regarding Supplemental Questionnaire Responses" (January 17, 2008).

<sup>11</sup> See *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007) ("CFS"), and accompanying Issue and Decision Memorandum ("I&D Memo") at Comment 1.

<sup>12</sup> See *OOB submission of January 28, 2008*, at pages 9–12.

<sup>13</sup> See *CFS*, I&D Memo at Comment 1.

determination, but will consider them for the final determination.

### Targeted Dumping Allegation

On January 2, 2008, Bridgestone filed an allegation of targeted dumping based on a pattern of export prices for comparable merchandise that differ among regions for Guizhou Tyre, Starbright and TUTRIC, and an allegation of targeted dumping based on a pattern of export prices for comparable merchandise that differ among customers for Guizhou Tyre, Starbright, TUTRIC and Xugong. In addition, Bridgestone filed allegations of targeted dumping based on a pattern of export prices for comparable merchandise that differ significantly among customers and regions for Starbright—TUTRIC combined. On January 3, 2008, Petitioners filed a letter supporting Bridgestone's allegation of targeted dumping. On January 9, 2008, Xugong submitted comments on Bridgestone's targeted dumping allegation. On January 10, 2008, Bridgestone amended its January 2, 2008, targeted dumping allegation to include two computer files that were omitted from its initial allegation.

On January 10, 2008, Xugong submitted comments regarding the targeted dumping allegation. On January 22, 2008, the Department requested that Bridgestone revise its targeted dumping allegation to include customer-specific targeted dumping allegations and to revise its methodology for calculating the "mean" prices for alleged "targeted and "non-targeted" sales, and to eliminate the bracketing of any words that effectively constitute the statutory requirements of the allegations, or the methodology used to make the allegations. On January 23, 2008, Starbright and TUTRIC provided comments on Bridgestone's targeted dumping allegations. Bridgestone filed a supplement to its targeted dumping allegation on January 25, 2008.

Given the timing of the allegation, the respondent parties' comments thereon, as well as the extensive nature of these comments, the Department was unable to address the targeted dumping allegation for this preliminary determination. We intend to issue a preliminary finding regarding these allegations after the preliminary LTFV determination, but within sufficient time to allow all parties time to comment for the final LTFV determination.

### Postponement of Final Determination

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135

days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received requests to postpone the final determination from Petitioners and Xugong on January 23, 2008, from Starbright and TUTRIC on January 28, 2008, and from Bridgestone on January 29, 2008. In addition, Xugong, Starbright and TUTRIC consented to the extension of provisional measures from a four-month period to not longer than six months. Because this preliminary determination is affirmative, the requests for postponement were made by exporters who account for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondents' requests, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to not longer than six months.

### Period of Investigation

The POI is October 1, 2006, through March 31, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was June 2007.<sup>14</sup>

### Scope of Investigation

The products covered by the scope of the investigation are new pneumatic tires designed for off-the-road 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, 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,<sup>15</sup> combine harvesters,<sup>16</sup> agricultural high clearance sprayers,<sup>17</sup> industrial tractors,<sup>18</sup> log-skidders,<sup>19</sup> agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;<sup>20</sup> (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,<sup>21</sup> front end loaders,<sup>22</sup> dozers,<sup>23</sup> lift trucks, straddle carriers,<sup>24</sup> graders,<sup>25</sup> mobile cranes, 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.<sup>26</sup> The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or

<sup>15</sup> An agricultural tractor is a four-wheeled vehicle usually with large rear tires and small front tires that is used to tow farming equipment.

<sup>16</sup> A combine harvester is used to harvest crops such as corn or wheat.

<sup>17</sup> An agricultural sprayer is used to irrigate agricultural fields.

<sup>18</sup> An industrial tractor is a four-wheeled vehicle usually with large rear tires and small front tires that is used to tow industrial equipment.

<sup>19</sup> 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.

<sup>20</sup> A skid-steer loader is a four-wheel drive vehicle 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.

<sup>21</sup> A haul truck, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) is typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

<sup>22</sup> A front loader has lift arms in front of the vehicle. It can scrape material from one location to another, carry material in its bucket or load material into a truck or trailer.

<sup>23</sup> 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.

<sup>24</sup> 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.

<sup>25</sup> 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.

<sup>26</sup> A counterbalanced lift truck is a rigid frame, 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.

<sup>14</sup> See 19 CFR 351.204(b)(1).

loading a wide variety of equipment and materials in agricultural, construction and industrial settings. The foregoing descriptions 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 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 petitions range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type 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, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. 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 a tire 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 used on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications; and tires of a kind used for mining and construction vehicles and equipment that have a rim 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).

#### Scope Comments

In accordance with the preamble to our regulations,<sup>27</sup> in our initiation notice, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 14 calendar days of publication of the initiation notice.<sup>28</sup>

On August 20, 2007, Petitioners, several domestic interested parties, and Guizhou Tyre filed scope comments. Petitioners submitted comments arguing that the existing scope description, which focused on end-use applications, best described the subject goods and that no further HTSUS item-numbers should be added. Guizhou Tyre submitted comments proposing criteria for model matching. Bridgestone submitted comments requesting certain revisions and clarifications to the scope language. Carlisle requested confirmation that lawn and garden tires are excluded from the scope of the investigation. Valmont requested confirmation that mounted OTR tires-and-wheels are excluded from the scope of the investigation. On August 21, 2007, Agri-Fab submitted comments in support of defining the scope based on

the end-use application of the subject merchandise.

On August 27, 2007, Petitioners, Guizhou Tyre and Bridgestone submitted rebuttal scope comments. Petitioners argued that the Department should reject Guizhou Tyre's model-match criteria, and that the Department should adopt Bridgestone's proposals for the revision and clarification of the scope language. They also endorsed the comments submitted by Carlisle, Valmont and Agri-Fab. Guizhou Tyre requested that the Department reject Petitioners' interpretation of the scope language to cover agricultural tires with rim diameters of 72 inches and Petitioners' claim that tires used for "highway-towed implements" are within the scope of this investigation. Bridgestone argued that the Department should reject Guizhou Tyre's model-match criteria and that the Department should confirm that tires are within the scope whether entered into the United States unmounted or mounted on rims. The Department will review all scope comments submitted in both the antidumping and countervailing duty investigations and will issue a preliminary scope subsequent to the issuance of the preliminary LTFV determination but in time to allow all parties to the proceedings an opportunity to comment for the final determinations.

#### Selection of Respondents

Section 777 A(c)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. Section 777 A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to it, the Department determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. We determined we had the resources to examine four

<sup>27</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

<sup>28</sup> See *Notice of Initiation*, 72 FR at 43592.

exporters. We further determined to limit our examination to the four exporters accounting for the largest volume of the subject merchandise pursuant to section 777 A(c)(2)(B) of the Act. Our analysis indicates that Guizhou Tyre, Xugong, TUTRIC and Starbright are the four largest PRC exporters of subject merchandise by weight, and account for a significant percentage of all exports of the subject merchandise from the PRC during the POI. As a result, we selected the above entities as the mandatory respondents in this investigation.<sup>29</sup>

### Non-Market Economy Country

For purposes of initiation, Petitioners submitted an LTFV analysis for the PRC as an NME.<sup>30</sup> In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.<sup>31</sup> Therefore, we have treated the PRC as an NME country for purposes of this preliminary determination.

### Surrogate Country

When the Department is investigating imports from an NME country or producer, section 773(c)(1) of the Act directs it to base normal value ("NV"), in most circumstances, on the NME producer's FOPs valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development.<sup>32</sup> Once the countries that are economically comparable to the PRC have been

identified, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.

We have determined that there is insufficient data from Sri Lanka and have determined it appropriate to use India as a surrogate country pursuant to section 773(c)(4) of the Act based on the following: (A) India is at a level of economic development comparable to that of the PRC, and (B) India is a significant producer of comparable merchandise. Furthermore, we have reliable data from India that we can use to value the FOPs.<sup>33</sup> Thus, we have calculated NV using Indian prices when available and appropriate to value the FOPs of the OTR tires producers. We have obtained and relied upon publicly available information wherever possible.<sup>34</sup>

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit within 40 days after the date of publication of the preliminary determination publicly available information to value the FOPs.

### Affiliation

Section 771(33) of the Act states that the Department considers the following entities to be affiliated: (A) Members of a family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants; (B) Any officer or director of an organization and such organization; (C) Partners; (D) Employer and employee; (E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) Any person who controls any other person and such other person.

For purposes of affiliation, section 771(33) of the Act states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. In order to find affiliation between companies, the Department

must find that at least one of the criteria listed above is applicable to the respondents.

To the extent that the affiliation provisions in section 771(33) of the Act do not conflict with the Department's application of separate rates and the statutory NME provisions in section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding.<sup>35</sup>

### Starbright and TUTRIC

Based on our examination of the evidence presented in Starbright, TUTRIC and GPX's submissions, we preliminarily determine that GPX and TUTRIC do not have a close supplier relationship such that one party is reliant upon the other and thus preliminarily determine they are not affiliated parties within the meaning of section 771(33) of the Act.<sup>36</sup> Therefore, these companies will not be treated as a single entity for the purposes of this preliminary determination.

### Guizhou Tyre

We preliminarily determine that Guizhou Tyre, Guizhou Advance Rubber Co., Ltd. ("GAR") and Guizhou Tyre Import and Export Co. ("GTCIE") are affiliated pursuant to sections 771(33)(B), (E), (F) and (G) of the Act, and that these companies should be treated as a single entity for the purposes of this investigation pursuant to 19 CFR 351.401(f). Based on our examination of the evidence presented in Guizhou Tyre's questionnaire responses, we have determined that: (1) Guizhou Tyre wholly owns both GAR and GTCIE; (2) Guizhou Tyre and GAR are affiliated producers of identical or similar merchandise; and (3) the potential for manipulation of price or production exists with respect to Guizhou Tyre, GAR and GTCIE.<sup>37</sup>

<sup>35</sup> See *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10413 (March 5, 2004), unchanged in *Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 70 FR 54361 (September 14, 2005).

<sup>36</sup> See Memorandum to the File "Antidumping Duty Investigation on New Pneumatic Off-the-Road Tires from the People's Republic of China: Affiliation and Collapsing of Hebei Starbright Tire Co. Ltd. and Tianjin United Tire & Rubber International Co. Ltd." (February 5, 2008).

<sup>37</sup> See Memorandum to the File, "Antidumping Investigation of Certain New Pneumatic Off-The-Road Tires ("OTR tires") from the People's Republic of China ("PRC"): Affiliation and Collapsing of Guizhou Tyre Co., Ltd., Guizhou Advance Rubber Co., Ltd., and Guizhou Tyre Import and Export Co.," (February 5, 2008).

<sup>29</sup> See Respondent Selection Memorandum.

<sup>30</sup> See *Notice of Initiation*, 72 FR at 43593.

<sup>31</sup> See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006) ("Artist Canvas").

<sup>32</sup> See Office of Policy Surrogate Countries Memorandum.

<sup>33</sup> *Id.* at 2.

<sup>34</sup> See Memorandum to Wendy J. Frankel, "Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Surrogate Value Memorandum" (February 5, 2008) ("Surrogate Value Memorandum").

## Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").<sup>38</sup> However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

### A. Separate-Rate Recipients<sup>39</sup>

#### 1. Wholly Foreign-Owned

Two separate rate companies reported in their SRAs that they are wholly owned by individuals or companies located in a market economy (collectively "Foreign-Owned SR Applicants"). See "Preliminary Determination" section below for companies marked with a "Λ"

<sup>38</sup> See also *Policy Bulletin 05.1*, which states: "[w]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of 'combination rates' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation." See *Policy Bulletin 05.1* at 6.

<sup>39</sup> All separate-rate applicants receiving a separate rate are hereby referred to collectively as the "SR Recipients"; this includes the mandatory respondents.

designating these companies as wholly foreign-owned. Therefore, because they are wholly foreign-owned, and we have no evidence indicating that they are under the control of the PRC, a separate-rate analysis is not necessary to determine whether these companies are independent from government control.<sup>40</sup> Accordingly, we have preliminarily granted a separate rate to these companies.

#### 2. Located in a Market Economy With No PRC Ownership

One of the separate rate companies in this investigation is located outside the PRC ("Foreign SR Applicant"). See "Preliminary Determination" section below for companies marked with a "+" designating these companies as located in a market economy, with no PRC ownership. Because there is no PRC ownership in any of these companies, we determine that no separate-rate analysis is required for these exporters because they are beyond the jurisdiction of the PRC government.<sup>41</sup> Accordingly, we have preliminarily granted a separate rate to these companies.

#### 3. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Twenty-four of the separate-rate companies in this investigation stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies (collectively "PRC SR Applicants"). Therefore, the Department must analyze whether these respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

##### a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.<sup>42</sup>

<sup>40</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104-05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

<sup>41</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996), citing *Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China*, 60 FR 22359, 22361 (May 5, 1995).

<sup>42</sup> See *Sparklers*, 56 FR at 20589.

The evidence provided by the mandatory respondents and the PRC SR Recipients supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) and there are formal measures by the government decentralizing control of companies.

##### b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>43</sup> The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The evidence placed on the record of this investigation by the PRC SR Recipients demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporters' exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. See "Preliminary Determination" section below for companies marked with an "\*" designating these companies as joint ventures between Chinese and foreign companies or wholly Chinese-owned companies that have demonstrated their eligibility for a separate rate.

### B. Companies Not Receiving a Separate Rate

The Department is not granting a separate rate to the following separate-rate applicant for the reasons discussed below.

<sup>43</sup> See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).



Double-Star was unable to demonstrate that it had sales of subject merchandise to the United States. Double-Star explained in its SRA that its reported U.S. sales were in fact sales to another PRC entity that it knew resold the merchandise to the United States. In NME proceedings, we do not examine sales prices between NME entities (e.g., transaction prices between an NME producer of subject merchandise and the NME exporter of subject merchandise) since NME countries are presumed to “not operate on market principles of cost or pricing structures so that the sales of merchandise in such countr{ies} do not reflect the fair value of the merchandise.” See section 771 (18) of the Act. Accordingly, non-exporting NME producers of subject merchandise are not eligible for examination as respondents. Based on Double-Star’s description of the sales chain for the merchandise it produces, Double-Star is a producer and not an exporter of subject merchandise, and therefore is not eligible to receive a separate rate in this investigation.

#### Application of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

In reviewing the respondents’ original and supplemental questionnaire responses, we have determined that certain reported items require additional supplemental information. We have used the reported values as facts available for this preliminary determination and will issue post-preliminary determination supplemental questionnaires to the respective respondents to address these issues.

#### The PRC-Wide Entity

The record evidence indicates there were more exporters of OTR tires from the PRC during the POI than those that responded to the Q&V questionnaire or the full antidumping questionnaire.<sup>44</sup> Specifically, we issued the Q&V questionnaire to 94 identified PRC exporters of the subject merchandise but

received responses from only 30, with one reporting that it made no shipments of subject merchandise during the POI. The other 29 responses did not account for all imports into the United States from the PRC during the POI. Further, evidence on the record indicates that the 94 identified PRC exporters of subject merchandise received our Q&V questionnaire. See Memorandum to the File, “Quantity and Value (“Q&V”) Tracking,” dated September 4, 2007. Based on the above facts, the Department preliminarily determines that there were exports of the subject merchandise under investigation from PRC producers/exporters that did not respond to the Department’s questionnaire, and we are treating these PRC producers/exporters as part of the countrywide entity. As a result, use of facts available pursuant to section 776(a)(2)(A) of the Act is warranted for the PRC entity.<sup>45</sup>

The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate AFA rate for the PRC-wide entity.<sup>46</sup>

#### Selection of the Adverse Facts Available Rate

Section 776(b) of the Act provides that if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may employ adverse inferences.<sup>47</sup> We find that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 C.F.R. 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse “as to effectuate the purpose of the facts available rule to

induce respondents to provide the Department with complete and accurate information in a timely manner.”<sup>48</sup> It is further the Department’s practice to select a rate that ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>49</sup>

Generally, the Department finds selecting the highest rate in any segment of the proceeding as AFA to be appropriate.<sup>50</sup> The Court of International Trade (“CIT”) and the Court of Appeals for the Federal Circuit (“Fed. Cir.”) have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.<sup>51</sup>

In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondents’ prior commercial activity, selecting the highest prior margin “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.”<sup>52</sup>

As AFA, we have preliminarily assigned to the PRC-wide entity a rate of 210.48 percent, the highest calculated rate from the petition. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department’s reliance on the petition rate to

<sup>48</sup> See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>49</sup> See SAA at 870. See also, *Brake Rotors From the People’s Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005).

<sup>50</sup> See, e.g., *Certain Cased Pencils from the People’s Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755, 76761 (December 28, 2005).

<sup>51</sup> See *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990) (affirming the Department’s presumption that the highest margin was the best information of current margins) (“*Rhone Poulenc*”); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in an LTFV investigation); *Kompass Food Trading International v. United States*, 24 CIT 678,683 (2000) (affirming a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (affirming a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

<sup>52</sup> See *Rhone Poulenc*, 899 F. 2d at 1190.

<sup>44</sup> See Respondent Selection Memorandum at 2.

<sup>45</sup> See, e.g., *Artist Canvas*, 71 FR 16116 (March 30, 2006).

<sup>46</sup> See *Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People’s Republic of China*, 67 FR 79049, 79053–54 (December 27, 2002), unchanged in *Final Determination of Sales at Less Than Fair Value: Saccharin From the People’s Republic of China*, 68 FR 27530 (May 20, 2003).

<sup>47</sup> See, e.g., *Artist Canvas*, 71 FR 16116, 16118 (March 30, 2006). See also Statement of Administrative Action accompanying the URAA, H.R. Rep No. 103–316 (“SAA”) at 870.



determine an AFA rate is subject to the requirement to corroborate secondary information.<sup>53</sup>

### Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as “information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>54</sup> The SAA provides that to “corroborate” means simply that the Department will satisfy itself that the secondary information to be used has probative value.<sup>55</sup> The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>56</sup> To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.<sup>57</sup>

The AFA rate that the Department used is from the petition.<sup>58</sup> Petitioners’ methodology for calculating the export price (“EP”) and NV in the petition is discussed in the initiation notice.<sup>59</sup> To corroborate the AFA margin we have selected, we compared that margin to the margins we found for the respondents. We found that the margin of 210.48 percent has probative value because it is in the range of margins we found for the mandatory respondents. Accordingly, we find that the rate of

210.48 percent is corroborated within the meaning of section 776(c) of the Act.

Consequently, we are applying a single antidumping rate—the PRC-wide rate—to producers/exporters that failed to respond to the Department’s antidumping questionnaire, and/or the Q&V questionnaire, or did not apply for a separate rate, as applicable. This rate will also apply to separate-rate applicants which did not demonstrate entitlement to a separate rate.<sup>60</sup> The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from mandatory respondents Guizhou Tyre, Starbright, TUTRIC and Xugong, and from the separate-rate recipients. These companies and their corresponding antidumping duty cash deposit rates are listed below in the “Preliminary Determination” section of this notice.

### Margin for the Separate-Rate Applicants

Several exporters of OTR tires from the PRC, listed above, were not selected as mandatory respondents in this investigation but have applied for separate-rate status and provided information to the Department for this purpose. We have established a weighted-average margin for all separate-rate recipients, based on the rates we calculated for the mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on AFA. That rate is 24.75 percent. The exporters given a separate rate are identified by name in the “Preliminary Determination” section of this notice.

### Fair Value Comparisons

To determine whether sales of OTR tires to the United States by the mandatory respondents were made at LTFV, we compared EP or CEP to NV, as described in the “Export Price,” “Constructed Export Price” and “Normal Value” sections of this notice.

### Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for TUTRIC, Xugong and certain of

Guizhou Tyre’s U.S. sales because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because CEP was not otherwise indicated.

Xugong claimed that it sold certain sales of subject merchandise through a U.S. affiliate (*i.e.*, API) in the United States and Xugong reported these sales as CEP sales. After examining evidence on the record, we have determined that Xugong is not affiliated with API within the meaning of the Act and regulations.<sup>61</sup> Thus, for the preliminary determination, we have classified Xugong’s sales to API as EP sales.

We calculated EP based on the packed FOB, CFR, CNF, CIF or delivered prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.*, foreign inland freight from the plant to the port of exportation, foreign inland insurance, domestic brokerage) in accordance with section 772(c)(2)(A) of the Act.<sup>62</sup> To value foreign inland insurance, we used the average insurance expenses reported in the public version of Agro Dutch’s May 24, 2005 response submitted in the February 2004–January 2005 administrative review of the antidumping duty order on certain preserved mushrooms from India.<sup>63</sup>

### Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In accordance with section

<sup>61</sup> See section 771(33) of the Act and 19 CFR 351.102(b).

<sup>62</sup> For a detailed description of all adjustments, see Memorandum to the File, “Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Analysis Memorandum for the Preliminary Determination: Tianjin United Tire & Rubber International Co., Ltd. (‘TUTRIC’)” (February 5, 2008) (‘TUTRIC Preliminary Analysis Memorandum’); Memorandum to the File, “Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Analysis Memorandum for the Preliminary Determination: Guizhou Tyre Co., Ltd. (‘GTC’) and its affiliates (collectively ‘Guizhou Tyre’)” (February 5, 2008) (‘Guizhou Tyre Preliminary Analysis Memorandum’); and “Analysis Memorandum for the Preliminary Determination: Xuzhou Xugong Tyre Co., Ltd. (‘Xugong’)” (February 5, 2008) (‘Xugong Preliminary Analysis Memorandum’).

<sup>63</sup> See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005). See also *Surrogate Value Memorandum*.

<sup>53</sup> See the “Corroboration” section below.

<sup>54</sup> See SAA at 870.

<sup>55</sup> See *id.*

<sup>56</sup> See *id.*

<sup>57</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Final Results of Antidumping Duty Administrative Reviews and Termination in Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*, 62 FR 11825 (March 13, 1997).

<sup>58</sup> See “Antidumping Duty Investigation Initiation Checklist: Certain Off-the-Road Tires from the People’s Republic of China (PRC)” at 10. See *Notice of Initiation*, 72 FR at 43593.

<sup>59</sup> See *Notice of Initiation*, 72 FR at 43593.

<sup>60</sup> See, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People’s Republic of China*, 65 FR 25706, 25707 (May 3, 2000).

772(b) of the Act, we used CEP for Starbright's and certain of Guizhou Tyre's sales because the sales were made by the U.S. affiliate in the United States.

We calculated CEP based on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(d)(1) of the Act, we made deductions from the starting price for billing adjustments, movement expenses, discounts and rebates. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where applicable, foreign inland freight and insurance from the plant to the port of exportation, foreign inland insurance, ocean freight, marine insurance, U.S. Customs duty, U.S. brokerage and handling, U.S. inland freight from port to the warehouse, warehousing expense and U.S. inland freight from the warehouse to the customer. In accordance with section 772(d)(1) of the Act, the Department deducted, where applicable, commissions, credit expenses, warranty expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 773(a) of the Act, we calculated Starbright's credit expenses and inventory carrying costs based on the Federal Reserve short-term rate.<sup>64</sup>

#### Adjustment for Domestic Subsidies

On January 28, 2008, the Bureau of Fair Trade for Imports & Exports ("BOFT") of the Ministry of Commerce of the PRC submitted a request that the Department adjust U.S. prices<sup>65</sup> for what it claims are double remedies. While the Department has always been determined to prevent any double remedies from arising (*see, e.g., Wheatland Tube v. United States*, 495 F.3d 1355, 1363 (Fed. Cir. 2007)), BOFT offers no evidence supporting its

argument that domestic subsidies automatically lower prices (including export prices) *pro rata*. Instead, BOFT argues that U.S. law embodies the presumption that domestic subsidies lower prices *pro rata*. We do not agree. First, despite addressing the issue of parallel AD duties and CVDs directly, and explicitly requiring that the amount of any CVDs to offset export subsidies be added to U.S. price, Congress provided no adjustment for CVDs imposed by reason of domestic subsidies in NME proceedings. Second, we find the assertion that the AD law embodies the presumption that domestic subsidies automatically lower prices, *pro rata*, to be baseless.<sup>66</sup>

BOFT is correct in noting that the purpose of adding CVDs to offset export subsidies to U.S. prices is to prevent AD duties from constituting a second remedy for export subsidies. BOFT is also correct that the apparent premise of this adjustment is the presumption that export subsidies automatically lower the price of exported merchandise, *pro rata*, increasing dumping margins accordingly. While this presumption may be debatable, it is not unreasonable, given the typically direct connection between export subsidies and exports. In any event, the statute plainly requires the Department to add the full amount of CVDs imposed to offset export subsidies to the U.S. price. *See* section 772(c)(1)(C) of the Act.

The premise of BOFT's claimed adjustment is that the AD law embodies the presumption that domestic subsidies automatically lower export prices, *pro rata* (while having no effect upon normal value, as determined in NME proceedings). BOFT provides no basis for this presumption. Whereas the connection between export subsidies and export prices is direct, the connection between domestic subsidies and export price is indirect and subject to a number of variables. Consequently, presuming that domestic subsidies automatically lower export prices, *pro rata*, would be speculative.<sup>67</sup>

More importantly, we find no indication in the statute or legislative history that Congress harbored any presumption about the effect of domestic subsidies upon export prices, let alone the presumption that they automatically reduce export prices, *pro rata*. The Senate Report accompanying the 1979 legislation states simply that, for domestic subsidies (where the situation with respect to the domestic and export markets is the same) no adjustment to U.S. price is appropriate.

*See* Trade Agreement Act of 1979, Report of the Committee on Finance on H.R. 4537, Senate Report No. 96-249, 96th Cong. (July 17, 1979), at 79. In so stating, Congress may have presumed that domestic subsidies had no effect on prices, had the same (if uncertain) effect on domestic and export prices, or may have presumed nothing. Thus, neither the statute nor the Senate Report indicates that the statute embodies the presumption that domestic subsidies automatically lower prices (including export prices) *pro rata*.

BOFT asserts that the presumption that domestic subsidies lower prices, *pro rata*, is the whole basis for imposing CVDs upon such subsidies. That is not correct. While subsidies unquestionably benefit their recipients, it is by no means certain that those recipients automatically respond to subsidies by lowering their prices, *pro rata*, as opposed to investing in capital improvements, retiring debt, or any number of other uses.

BOFT also argues that the fact that the Department uses only surrogate values that are "subsidy free" demonstrates that the Department believes subsidy recipients automatically lower their prices *pro rata*. This is also incorrect. The House Report cited by BOFT establishes only that Congress believed that Commerce should avoid using values that may have been affected by dumping or subsidies. Similarly, the Department's compliance with Congress' direction does not establish that the Department has made any assumption about the impact of subsidies upon prices. The Department has acknowledged simply that the existence of dumping or subsidies may taint the values upon which it otherwise would rely.

BOFT also argues that the Department previously has assumed that benefits from domestic subsidies are fully passed through into home-market and export prices. This is misleading. The more accurate statement would be that, when it has considered the issue, the Department has sometimes presumed that, whatever the effect, if any, of domestic subsidies upon the prices subsequently charged by their recipients, that effect would be the same for domestic prices and export prices.<sup>68</sup>

BOFT also argues that, by recognizing that subsidies may have no (or an unpredictable) effect upon prices subsequently charged by their recipients in NME countries, the Department is conceding that it is not possible to measure subsidies in an NME country. This is incorrect. In both market

<sup>64</sup> For a detailed description of all adjustments, *see* Memorandum to the File, "Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Analysis Memorandum for the Preliminary Determination: Hebei Starbright Tire Co., Ltd. ('Starbright')" (February 5, 2008) ("Starbright Preliminary Analysis Memorandum").

<sup>65</sup> Section 772(c)(1)(C) of the Act directs the Department to add the amount of CVDs imposed to offset export subsidies to the U.S. price. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 67 FR 62124, 62165 (October 3, 2002), where we stated, "We believe the economic theory implicit in section 772(c)(1)(C) of the Act should also generally apply to our cash deposit calculations in an investigation."

<sup>66</sup> *See CFS, I&D Memo at Comment 2.*

<sup>67</sup> *See CFS, I&D Memo at Comment 2.*

<sup>68</sup> *See CFS, I&D Memo at Comment 2.*

economy and NME countries, identifying subsidies involves measuring benefits received by a firm. Whether such firms respond to subsidies received by lowering their prices, *pro rata*, would be a completely separate inquiry in either a market economy or NME country.

Because we do not accept BOFT's assertion that the AD law embodies the presumption that domestic subsidies automatically lower export prices, *pro rata*, and that is the only basis on which BOFT has claimed an adjustment, we must deny BOFT's request.

### Normal Value

We compared NV to weighted-average EPs and CEPs in accordance with section 777A(d)(1) of the Act. Further, section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies.

The Department's questionnaire requires that the respondent provide information regarding the weighted-average FOPs across all of the company's plants that produce the subject merchandise, not just the FOPs from a single plant. This methodology ensures that the Department's calculations are as accurate as possible.<sup>69</sup> The Department calculated the FOPs using the weighted-average factor values for all of the facilities involved in producing the subject merchandise for each exporter. The Department calculated NV for each matching control number ("CONNUM") based on the factors of production reported from each of the exporters' suppliers and then averaged the supplier-specific NV together, weighted by production quantity, to derive a single, weighted-average NV for each CONNUM exported by each exporter.

### Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by respondents for the

POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production, where appropriate. This adjustment is in accordance with the Fed. Cir. decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997).

The mandatory respondents reported that certain of their reported raw material inputs were sourced from a market-economy country and paid for in market-economy currencies. Pursuant to 19 CFR 351.408(c)(1), when a mandatory respondent sources inputs from a market-economy supplier in meaningful quantities (*i.e.*, not insignificant quantities), we use the actual price paid by respondents for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.<sup>70</sup> Guizhou Tyre's, Starbright's, and TUTRIC's reported information demonstrates that the quantities of certain raw materials purchased from market-economy suppliers are significant. Where we found market economy purchases to be in significant quantities, in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*, we have used the actual purchases of these inputs to value the inputs.<sup>71</sup> For a detailed description of all actual values used for market-economy inputs, see the company-specific analysis memoranda dated February 5, 2008. Where the quantity of the input purchased from market-economy suppliers is insignificant, the Department will not rely on the price paid by an NME producer to a market-economy supplier because it cannot have confidence that a company could fulfill all its needs at that price. For Guizhou Tyre, and TUTRIC, the Department found certain of their inputs

purchased from market-economy suppliers to be insignificant.<sup>72</sup>

For this preliminary determination, in accordance with past practice, we used import values from the World Trade Atlas® online ("Indian Import Statistics"), which were published by the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with the POI to calculate surrogate values for the mandatory respondents' material inputs. Where we found Indian Import Statistics to be unreliable, we used Indonesian Import Statistics from the World Trade Atlas.<sup>73</sup> In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.<sup>74</sup>

Where we could not obtain publicly available information contemporaneous with the POI with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the *International Financial Statistics* of the International Monetary Fund ("IMF").

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>75</sup> We are also directed by

<sup>72</sup> See Guizhou Tyre Preliminary Analysis Memorandum, Starbright Preliminary Analysis Memorandum, TUTRIC Preliminary Analysis Memorandum, and Xugong Preliminary Analysis Memorandum.

<sup>73</sup> See Surrogate Value Memorandum.

<sup>74</sup> See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004).

<sup>75</sup> See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's

<sup>69</sup> See, e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China, 68 FR 61395 (October 28, 2003), and the accompanying Issues and Decision Memorandum at Comment 19.

<sup>70</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

<sup>71</sup> See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006) ("Antidumping Methodologies: Market Economy Inputs").

the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized.<sup>76</sup> Rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. In instances where a market economy input was obtained solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input. In addition, we excluded Indian import data from NME countries from our surrogate value calculations.<sup>77</sup>

We used Indian transport information in order to value the inland freight cost of the raw materials. The Department determined the best available information for valuing truck freight to be from <http://www.infreight.com> and rail freight to be from <http://www.indianrailways.gov.in>. This source provides daily rates from six major points of origin to five destinations in India. The Department obtained a price quote on the first day of each month from June 2005 to May 2006 from each point of origin to each destination and averaged the data accordingly. We adjusted these rates for inflation.

Consistent with the Department's practice, we used two sources to calculate a surrogate value for domestic brokerage expenses.<sup>78</sup> These data were averaged with the February 2004–January 2005 data contained in the May 24, 2005, public version of Agro Dutch Industries Limited's ("Agro

Dutch") response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from India.<sup>79</sup> The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions are ranged data. The Department first derived an average per-unit amount from each source. Then the Department adjusted each average rate for inflation. Finally, the Department averaged the two per-unit amounts to derive an overall average rate for the POI.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in November 2005, available at <http://ia.ita.doc.gov/wages/index.html>. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. If the NME wage rates are updated by the Department prior to issuance of the final determination, we will use the updated wage rate in the final LTFV determination.

To value electricity, we used data from the International Energy Agency *Key World Energy Statistics* (2003 edition). Because the value was not contemporaneous with the POI, we adjusted the rate for inflation.

The Department valued water using data from the Maharashtra Industrial Development Corporation (<http://www.midcindia.org>) because it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the "inside industrial areas" usage category and 193 for the "outside industrial areas" usage category. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation.

We valued steam using the January–June 1999 Indian price data from PR Newswire Association Inc. following the methodology in *Goldlink Industries Co., Ltd., Trust Chem Co., Ltd., Tianjin Hanchem International Trading Co., Ltd. v. United States*, 431 F. Supp. 2d 1323 (CIT 2006).<sup>80</sup> Because the information was not contemporaneous

with the POI, we applied the appropriate WPI inflator.<sup>81</sup>

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements for the year ending March 31, 2007, of Apollo Tyres Ltd., CEAT Limited, Falcon Tyres Ltd., and TVS Srichakra Limited, and the financial statement for the year ending December 31, 2006, of Goodyear India Limited, producers of the subject merchandise from India.<sup>82</sup> The Department may consider other publicly available financial statements for the final determination, as appropriate.

Guizhou Tyre claimed that it produced five separate types of by-products consisting of the scrap of steel curtain, rubber, tires, steel wire for beading and nylon.<sup>83</sup> It claimed that it sold all five types of by-product. However, it failed to demonstrate that it sold scrap to unaffiliated purchasers.<sup>84</sup> Therefore, for the preliminary determination, we have not granted a by-product offset for any of Guizhou Tyre's claimed by-products.<sup>85</sup>

In its questionnaire responses, Xugong stated that it generates a "waste" by-product which it sold during the POI. However, record evidence indicates that Xugong's single reported waste by-product is comprised of four separate by-products (*i.e.*, steel wire, rubber, and two different types of fabric). Further, Xugong did not demonstrate actual sales of the claimed waste product during the POI. Because Xugong reported different types of by-products in a cumulative by-product field, reported four different surrogate values to one per-unit consumption of waste, and did not demonstrate actual sales of the individual waste products at issue, we are not able to grant Xugong's requested by-product offset.<sup>86</sup>

On January 17, 2008, Starbright requested that the Department grant it a CEP offset for differences in level of trade between its U.S. sales and those of the surrogate producers, under section 773(a)(7)(B) of the Act. Section 773(a)(7)(B) of the Act allows for a reduction in NV when NV is established at a more advanced stage of distribution than the level of trade of the CEP, but where the available data do not provide an appropriate basis on which to calculate—under section 773(a)(7)(A) of the Act—a level-of-trade adjustment. In

*Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

<sup>76</sup> See *Omnibus Trade and Competitiveness Act of 1988*, Conference Report to Accompanying H.R. 3, H.R. Rep. 100–576 at 590 (1988).

<sup>77</sup> For a detailed description of all surrogate values used for each respondent, see Surrogate Value Memorandum.

<sup>78</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19704 (April 17, 2006) (utilizing these same data, unchanged for the final determination); *Final Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006). The Department averaged December 2003–November 2004 data contained in the February 28, 2005, public version of Essar Steel's response submitted in the antidumping duty administrative review of hot-rolled carbon steel flat products from India. See also *Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006) (unchanged in the final results); *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 40694 (July 18, 2006).

<sup>79</sup> See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005). See also Surrogate Value Memorandum.

<sup>80</sup> See Surrogate Value Memorandum.

<sup>81</sup> See Surrogate Value Memorandum.

<sup>82</sup> See Surrogate Value Memorandum.

<sup>83</sup> See Guizhou DQR pg. 15.

<sup>84</sup> See Section D pg. 5, Exhibit D–9.

<sup>85</sup> See Guizhou Tyre Preliminary Analysis Memorandum.

<sup>86</sup> See Xugong Preliminary Analysis Memorandum.

applying the CEP offset, the Department reduces NV by the amount of indirect selling expenses incurred in the country in which NV is determined on sales of the foreign like product, but not more than the amount of such expenses for which a deduction is made under section 772(d)(1)(D) of the Act ("additional adjustments to constructed export price").

In NME cases, the Department calculates NV pursuant to section 773(c) of the Act. Consequently, normal value for NME cases is determined under a different subsection of the statute than normal value for ME cases. See sections 772(a) and 772(e) of the Act. In the subsection of the statute regarding NME NV, there is no provision for allowing either a level-of-trade adjustment or, by extension, a CEP offset. Furthermore, even if the statute contemplated considering such an adjustment for NME cases, the Department would have to apply the same standards as those used in market economy cases. In other words, the Department would have to issue a level-of-trade questionnaire to determine selling functions conducted in the country in which NV is determined on sales of the foreign like product. Because NV in an NME case is calculated based on surrogate valuation of FOPs, we do not analyze selling functions of the PRC respondent. Consequently, to determine whether a CEP offset is warranted, the Department would have to issue a level-of-trade questionnaire to surrogate financial companies, which is not practicable because they are not parties to the proceeding, and thus not subject to verification. Furthermore, the Department allows parties to provide surrogate financial statements after its preliminary findings, thus to issue a level-of-trade questionnaire after the preliminary findings would not allow ample time for parties to the proceeding to effectively comment on the

responses, and would hinder the Department's ability to meet its statutory deadlines for completion of the proceeding.

Further, we have not made circumstance-of-sale ("COS") adjustments as requested by Starbright for expenses borne by GPX, its U.S. affiliate, on sales of subject merchandise in the United States. Under the statute, such expenses are direct expenses incurred in the United States and are properly deducted from starting price to arrive at CEP. Because they are borne by the U.S. affiliate and are not incurred in the foreign country, such expenses cannot form the basis of any COS adjustments pursuant to section 773(a)(6)(C) of the Act.<sup>87</sup>

In a market economy proceeding, the Department, in calculating NV, will make COS adjustments by offsetting expenses incurred by the exporter on sales to one market with the corresponding direct or indirect selling expenses incurred by that same exporter on sales to the other. For example, if an exporter paid commissions on its sales in the home market but not on its sales to the United States, the Department would deduct the home market commissions from NV but add to NV the exporter's commissions and/or indirect selling expenses incurred on its sales to the United States.<sup>88</sup>

Applying that example to this NME investigation, however, in order to make a COS adjustment, with respect to commissions paid by one or more of the surrogate producers<sup>89</sup> but not paid by Starbright, the Department would have to collect and rely on data with respect to Starbright's indirect selling expenses incurred in the PRC for sales to the United States. Such expenses, however, would be based on internal PRC pricing, which the Department does not utilize for purposes of antidumping calculations because such pricing reflects internal transactions in an NME

country, which are considered unreliable. See section 771(18)(A) of the Act. See also *Shandong Huarong Machinery Co., Ltd. v. United States*, 2007 WL 4633315 at 13 (CIT Nov. 20, 2007).

Thus, while Starbright assumes that the Department's practice of making COS adjustments in market economy cases can be replicated in the NME context, we are precluded from making parallel adjustments in NME cases where the necessary data to calculate such adjustments cannot be relied upon due to the fact that the relevant expenses are incurred and priced under NME conditions. Therefore, for the reasons cited above, we find that we are precluded from making COS adjustments in this investigation.

### Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

### Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from Guizhou Tyre, Starbright, TUTRIC and Xugong upon which we will rely in making our final determination. Additionally, we may also verify the information on the record submitted by selected separate-rate applicants.

### Combination Rates

In the *Notice of Initiation*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.<sup>90</sup> This change in practice is described in *Policy Bulletin 05.1*.<sup>91</sup>

<sup>87</sup> See *Torrington Co. v. United States*, 156 F.3d 1361, 1363 (Fed. Cir. 1998).

<sup>88</sup> We note that with the limited exception of certain freight expenses, Starbright has provided no record evidence in this investigation regarding specific expenses incurred in the PRC by the foreign exporter.

<sup>89</sup> The Department's practice is not to analyze information or amounts utilized to construct a surrogate producer's financial statements as the surrogate producer is not a party to the proceeding and the books and records supporting these financial statements are not subject to verification.

<sup>90</sup> See *Notice of Initiation*, 72 FR at 43595.

<sup>91</sup> See Footnote 36, *supra*.

**Preliminary Determination**

The weighted-average dumping margins are as follows:

Exporter	Producer	Margin (in percent)
Guizhou Tyre Co., Ltd.* .....	Guizhou Advance Rubber .....	16.35
Guizhou Tyre Co., Ltd.* .....	Guizhou Tyre Co., Ltd .....	16.35
Hebei Starbright Co., Ltd.^ .....	Hebei Starbright Co., Ltd .....	19.73
Tianjin United Tire & Rubber International Co., Ltd. ("TUTRIC").	Tianjin United Tire & Rubber International Co., Ltd. ("TUTRIC").	10.98
Xuzhou Xugong Tyre Company Limited* .....	Xuzhou Xugong Tyre Company Limited .....	51.81
Aeolus Tyre Co., Ltd.* .....	Aeolus Tyre Co., Ltd .....	24.75
Double Coin Holdings Ltd.* .....	Double Coin Holdings Ltd .....	24.75
Double Coin Holdings Ltd.* .....	Double Coin Group Rugao Tyre Co., Ltd .....	24.75
Double Coin Holdings Ltd.* .....	Double Coin Group Shanghai Donghai Tyre Co., Ltd .....	24.75
Double Happiness Tyre Industries Corp., Ltd.* .....	Double Happiness Tyre Industries Corp., Ltd .....	24.75
Jiangsu Feichi Co., Ltd.* .....	Jiangsu Feichi Co., Ltd .....	24.75
KS Holding Limited^ .....	Oriental Tyre Technology Ltd .....	24.75
KS Holding Limited^ .....	Shandong Taishan Tyre Co., Ltd .....	24.75
KS Holding Limited^ .....	Xu Zhou Xugong Tyres Co., Ltd .....	24.75
Laizhou Xiongying Rubber Industry Co., Ltd.* .....	Laizhou Xiongying Rubber Industry Co., Ltd .....	24.75
Oriental Tyre Technology Limited+ .....	Midland Off the Road Tire Co., Ltd .....	24.75
Oriental Tyre Technology Limited+ .....	Midland Specialty Tire Co., Ltd .....	24.75
Oriental Tyre Technology Limited+ .....	Xuzhou Hanbang Tyres Co., Ltd .....	24.75
Qingdao Etyre International Trade Co., Ltd.* .....	ShanGong Xingua Tyre Co. Ltd .....	24.75
Qingdao Etyre International Trade Co., Ltd.* .....	Shandong Xingyuan International Trade Co. Ltd .....	24.75
Qingdao Etyre International Trade Co., Ltd.* .....	Shandong Xingyuan Rubber Co. Ltd .....	24.75
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.* .....	Qingdao Eastern Industrial Group Co., Ltd .....	24.75
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.* .....	Qingdao Qihang Tyre Co., Ltd .....	24.75
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.* .....	Qingdao Shuanghe Tyre Co., Ltd .....	24.75
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.* .....	Qingdao Yellowsea Tyre Factory .....	24.75
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.* .....	Shandong Zhentai Tyre Co., Ltd .....	24.75
Qingdao Hengda Tyres Co., Ltd.* .....	Qingdao Hengda Tyres Co., Ltd .....	24.75
Qingdao Milestone Tyre Co., Ltd.* .....	Qingdao Shuanghe Tyre Co., Ltd .....	24.75
Qingdao Milestone Tyre Co., Ltd.* .....	Shandong Zhentai Tyre Co., Ltd .....	24.75
Qingdao Milestone Tyre Co., Ltd.* .....	Shifeng Double-Star Tire Co., Ltd .....	24.75
Qingdao Milestone Tyre Co., Ltd.* .....	Weifang Longtai Tyre Co., Ltd .....	24.75
Qingdao Qinghang Tyre Co., Ltd.* .....	Qingdao Qinghang Tyre Co., Ltd .....	24.75
Qingdao Qizhou Rubber Co., Ltd.* .....	Qingdao Qizhou Rubber Co., Ltd .....	24.75
Qingdao Sinorient International Ltd.* .....	Qingdao Hengda Tyres Co., Ltd .....	24.75
Qingdao Sinorient International Ltd.* .....	Shifeng Double-Star Tire Co., Ltd .....	24.75
Qingdao Sinorient International Ltd.* .....	Tenzhou Broncho Tyre Co., Ltd .....	24.75
Shandong Huitong Tyre Co., Ltd.* .....	Shandong Huitong Tyre Co., Ltd .....	24.75
Shandong Jinyu Tyre Co., Ltd.* .....	Shandong Jinyu Tyre Co., Ltd .....	24.75
Shandong Taishan Tyre Co., Ltd.* .....	Shandong Taishan Tyre Co., Ltd .....	24.75
Shandong Wanda Boto Tyre Co., Ltd.* .....	Shandong Wanda Boto Tyre Co., Ltd .....	24.75
Shandong Xingyuan International Trading Co., Ltd.* .....	Shandong Xingda Tyre Co., Ltd .....	24.75
Shandong Xingyuan International Trading Co., Ltd.* .....	Xingyuan Tyre Group Co., Ltd .....	24.75
Techking Tires Limited (Techking Enterprise (H.K.) Co., Ltd.)* .....	Shandong Xingda Tyre Co. Ltd .....	24.75
Techking Tires Limited (Techking Enterprise (H.K.) Co., Ltd.)* .....	Shandong Xing International Trade Co. Ltd .....	24.75
Techking Tires Limited (Techking Enterprise (H.K.) Co., Ltd.)* .....	Shandong Xingyuan Rubber Co. Ltd .....	24.75
Triangle Tyre Co., Ltd.* .....	Triangle Tyre Co., Ltd .....	24.75
Wendeng Sanfeng Tyre Co., Ltd.* .....	Wendeng Sanfeng Tyre Co., Ltd .....	24.75
Zhaoyuan Leo Rubber Co., Ltd.* .....	Zhaoyuan Leo Rubber Co., Ltd .....	24.75
PRC-Entity .....		210.48

**Disclosure**

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal**

**Register.** We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

## International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of OTR tires, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

## Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs may be submitted no later than five days after the deadline date for case briefs. See 19 CFR 351.309. A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice.<sup>92</sup> Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, at a time and location to be determined. See 19 CFR 351.310. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: February 5, 2008.

**Ronald K. Lorentzen,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 08-672 Filed 2-19-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-507-502]

#### Certain In-Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review

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

**SUMMARY:** In response to a request from Cal Pure Pistachios, Inc. (Cal Pure), a domestic interested party, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain in-shell raw pistachios (raw pistachios) from Iran. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 48613 (August 24, 2007). This review covers the period July 1, 2006, through June 30, 2007. We are now rescinding this review due to Cal Pure's withdrawal of its request for review.

**EFFECTIVE DATE:** February 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dena Crossland or John Drury, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3362 or (202) 482-0195, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Background

On July 17, 1986, the Department published in the **Federal Register** a notice of the antidumping duty order on raw pistachios from Iran. See *Antidumping Duty Order; Certain In-Shell Pistachios from Iran*, 51 FR 25922 (July 17, 1986). On July 3, 2007, the Department published the opportunity to request an administrative review of the antidumping duty order on raw pistachios from Iran for the period July 1, 2006, through June 30, 2007. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request*

*Administrative Review*, 72 FR 36420 (July 3, 2007).

In accordance with 19 CFR 351.213(b)(1), on July 24, 2007, Cal Pure, a domestic interested party, requested an administrative review of the sales of subject merchandise from Iran for the following companies: Ahmadi's Agricultural Production, Processing and Trade Complex (Ahmadi); Maghsoudi Farms (Maghsoudi); Rafsanjan Pistachio Producers Cooperative (RPPC); Razi Domghan Agricultural & Animal Husbandry Co. (Razi); and Tehran Negah Nima Trading Company Inc. (Nima). On August 24, 2007, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period July 1, 2006, through June 30, 2007. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 48613 (August 24, 2007).

On September 10, 2007, the Department issued its antidumping duty questionnaire to Ahmadi, Maghsoudi, Nima, Razi, and RPPC. On September 26, 2007, a former representative on behalf of RPPC notified the Department that it was no longer representing RPPC and provided a new mailing address for RPPC. On September 28, 2007, the Department sent RPPC the original questionnaire to the new mailing address in Iran. See Memorandum to the File from Judy Lao, Analyst, through Angelica Mendoza, Program Manager, dated October 3, 2007. On October 4, 2007, the representative for Maghsoudi, Nima, and Razi informed the Department that it would not be filing responses to the Department's questionnaire as Maghsoudi, Nima, and Razi did not export or ship subject merchandise during the period of review (POR). See Memorandum to the File from Judy Lao, Analyst, through Angelica Mendoza, Program Manager, dated October 12, 2007. On October 5, 2007, the Department received notice that the RPPC did not receive the antidumping questionnaire, and re-sent the original questionnaire, and changed the due dates for RPPC's responses, after revising the shipping information. See Memorandum to the File from Judy Lao, Analyst, through Angelica Mendoza, Program Manager, dated October 9, 2007. On October 10, 2007, Ahmadi's representative informed the Department that it would not be filing responses to the Department's questionnaire as it did not export or ship subject merchandise during the POR. See Letter from Ahmadi's Agricultural Production, Processing and Trade Complex, dated

<sup>92</sup> See 19 CFR 351.310(c).