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August 11, 2016

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Less-Than-Fair-Value Investigation of Certain New Pneumatic  
Off-the-Road Tires from India

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## I. SUMMARY

The Department of Commerce (“Department”) preliminarily determines that certain new pneumatic off-the-road tires (“OTR tires”) from India are not being, nor 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”).

## II. BACKGROUND

On January 8, 2016, the Department received antidumping duty (“AD”) petitions covering imports of OTR tires from the People’s Republic of China (“PRC”) and India, filed in proper form on behalf of Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (collectively, “Petitioners”).<sup>1</sup> The Department initiated this investigation on February 4, 2016.<sup>2</sup>

In the *Initiation Notice*, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (“CBP”) data for certain of the Harmonized Tariff Schedule

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<sup>1</sup> See Petitions for the Imposition of Antidumping Duties on Imports of Certain New Pneumatic Off-the-Road Tires from India and the People’s Republic of China and Countervailing Duties on Imports of Certain New Pneumatic Off-the-Road Tires from India, the People’s Republic of China, and Sri Lanka (January 8, 2016) (“Petitions”).

<sup>2</sup> See *Certain New Pneumatic Off-the-Road Tires from India and the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 81 FR 7073 (February 10, 2016) (“*Initiation Notice*”).

of the United States (“HTSUS”) subheadings listed in the scope of the investigation.<sup>3</sup> Accordingly, on February 10, 2016, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.<sup>4</sup>

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of OTR tires to be reported in response to the Department’s AD questionnaire.<sup>5</sup> Between February and March 2016, parties submitted comments and rebuttal comments in response to the scope comments and physical characteristics.<sup>6</sup>

On February 17, 2016, Petitioners submitted respondent selection comments requesting that the Department select the top two Indian producers and exporters of subject merchandise by quantity during the period of investigation (“POI”) for individual examination.<sup>7</sup> On the same day, the Department received comments on respondent selection from ATC Tires Private Ltd. (“ATC”) and its U.S. affiliate Alliance Tires Americas, Inc. (“ATA”) requesting that the Department individually examine ATC.<sup>8</sup> On March 1, 2016, the Department selected ATC and Balkrishna Industries Limited (“BKT”) as mandatory respondents in this investigation.<sup>9</sup> The Department’s initial AD questionnaires were issued to ATC and BKT on March 3, 2016.<sup>10</sup> Between April and July 2016, the Department issued multiple supplemental questionnaires to, and received responses from ATC and BKT. Between April and July, Petitioners submitted comments regarding ATC and BKT’s initial and supplemental questionnaire responses. On July 18, 2016,

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<sup>3</sup> See *Initiation Notice*, 81 FR at 7078.

<sup>4</sup> See Memorandum to the File, through Robert Bolling, Program Manager, Office IV, Antidumping and Countervailing Duty Operations, from Stephen Bailey, International Trade Analyst, Office IV, “Certain New Pneumatic Off-the-Road Tires from India: Customs Data for Respondent Selection” (February 10, 2016).

<sup>5</sup> See *Initiation Notice*, 81 FR at 7075.

<sup>6</sup> See Letter from Petitioners, “Certain New Pneumatic Off-the-Road Tires from India – Petitioners’ Comments on Product Characteristics” (February 26, 2016); Letter from ATC, “Certain New Pneumatic Off-the-Road Tires from India, China, and Sri Lanka: Comments Regarding the Scope of the Investigation” (February 23, 2016) (“ATC’s Scope Comments”); Letter from CEAT Limited, “Comments on product characteristics for AD Questionnaires: Certain New Pneumatic Off-the-Road Tires from India, China, and Sri Lanka” (February 23, 2016); Letter from ATC, “Certain New Pneumatic Off-the-Road Tires from India: Rebuttal Comments on Product Characteristics” (March 2, 2016); Letter from Petitioners, “Certain New Pneumatic Off-the-Road Tires from India – Petitioners’ Rebuttal Comments on Product Characteristics” (March 2, 2016); and Letter from Petitioners, “Certain New Pneumatic Off-the-Road Tires from China, India, and Sri Lanka: Petitioners’ Rebuttal Comments on Scope” (March 4, 2016) (“Petitioners’ Scope Rebuttal Comments”).

<sup>7</sup> See Letter from Petitioners, “Certain New Pneumatic Off-the-Road Tires from India – Petitioners’ Respondent Selection Comments” (February 17, 2016).

<sup>8</sup> See Letter from ATC, “Certain New Pneumatic Off-the-Road Tires from India: Comments Regarding Respondent Selection” (February 17, 2016).

<sup>9</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, from Lilit Astvatsatrian, International Trade Compliance Analyst, Office IV, “Antidumping Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Respondent Selection” (March 1, 2016).

<sup>10</sup> See Letter to ATC, “Investigation of Certain New Pneumatic Off-the-Road Tires from India: Antidumping Duty Questionnaire” (March 3, 2016); see also Letter to BKT, “Investigation of Certain New Pneumatic Off-the-Road Tires from India: Antidumping Duty Questionnaire” (March 3, 2016).

Petitioners, ATC, and BKT filed pre-preliminary comments, which we considered for the preliminary determination.<sup>11</sup>

On February 24, 2016, the U.S. International Trade Commission (“ITC”) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by imports of off road tires from India.<sup>12</sup>

On June 6, 2016, based upon a request from Petitioners, the Department published a notice of postponement for the preliminary determination in this investigation in accordance with section 733(c)(1)(B) of the Act and 19 CFR 351.205(f)(1).<sup>13</sup> As a result of the 50-day postponement, the revised deadline for the preliminary determination in this investigation is now August 11, 2016.<sup>14</sup>

We are conducting this investigation in accordance with section 733(b) of the Act.

### **III. PERIOD OF INVESTIGATION**

The POI is January 1, 2015, through December 31, 2015. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petitions which was January 2015.<sup>15</sup>

### **IV. POSTPONEMENT OF FINAL DETERMINATION**

Pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(b)(2)(i), Petitioners requested that the Department postpone the final determination.<sup>16</sup> In accordance with section 735(a)(2)(B) of the Act and 19 CFR 351.210(b)(2)(i), because our preliminary determination is negative and no compelling reasons for denial exist, we are granting Petitioners’ request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*.

### **V. SCOPE OF THE INVESTIGATION**

The scope of the investigation is OTR tires. OTR tires are tires with an off road tire size designation. The tires included in the scope may be either tube-type<sup>17</sup> or tubeless, radial, or non-radial, regardless of whether for original equipment manufacturers or the replacement market.

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<sup>11</sup> See Letter from Petitioners, “Certain New Pneumatic Off-the-Road Tires from India – Petitioners’ Pre-Preliminary Determination Comments” (July 18, 2016); Letter from ATC, “Certain New Pneumatic Off-the-Road Tires from India: Pre-Preliminary Comments” (July 18, 2016); and Letter from BKT, “Certain New Pneumatic Off-the-Road Tires from India: Balkrishna Industries Limited’s Pre-Preliminary Comments” (July 18, 2016);

<sup>12</sup> See *Certain New Pneumatic Off-the-Road Tires from China, India, and Sri Lanka*, 81 FR 10663 (March 1, 2016).

<sup>13</sup> See *Certain New Pneumatic Off-the-Road Tires from India: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 81 FR 36263 (June 6, 2016).

<sup>14</sup> *Id.*, 81 FR at 36264.

<sup>15</sup> See 19 CFR 351.204(b)(1).

<sup>16</sup> See Letter to the Secretary of Commerce from Petitioners “Petitioners’ Comment on the Extension of the Final Determination” (July 28, 2016).

<sup>17</sup> While tube-type tires are subject to the scope of these proceedings, tubes and flaps are not subject merchandise and therefore are not covered by the scope of these proceedings, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

Subject tires may have the following prefix or suffix designation, which appears on the sidewall of the tire:

Prefix designations:

DH – Identifies a tire intended for agricultural and logging service which must be mounted on a DH drop center rim.

VA – Identifies a tire intended for agricultural and logging service which must be mounted on a VA multipiece rim.

IF – Identifies an agricultural tire to operate at 20 percent higher rated load than standard metric tires at the same inflation pressure.

VF – Identifies an agricultural tire to operate at 40 percent higher rated load than standard metric tires at the same inflation pressure.

Suffix designations:

ML – Mining and logging tires used in intermittent highway service.

DT – Tires primarily designed for sand and paver service.

NHS – Not for Highway Service.

TG – Tractor Grader, off-the-road tire for use on rims having bead seats with nominal +0.188" diameter (not for highway service).

K – Compactor tire for use on 5° drop center or semi-drop center rims having bead seats with nominal minus 0.032 diameter.

IND – Drive wheel tractor tire used in industrial service.

SL – Service limited to agricultural usage.

FI – Implement tire for agricultural towed highway service.

CFO – Cyclic Field Operation.

SS – Differentiates tires for off-highway vehicles such as mini and skid-steer loaders from other tires which use similar size designations such as 7.00-15TR and 7.00-15NHS, but may use different rim bead seat configurations.

All tires marked with any of the prefixes or suffixes listed above in their sidewall markings are covered by the scope regardless of their intended use.

In addition, all tires that lack any of the prefixes or suffixes listed above in their sidewall markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the following sections of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set forth below. The sections of the Tire and Rim Association Year Book listing numerical size designations of covered OTR tires include:

The table of mining and logging tires included in the section on Truck-Bus tires;

The entire section on Off-the-Road tires;

The entire section on Agricultural tires; and

The following tables in the section on Industrial/ATV/Special Trailer tires:

- Industrial, Mining, Counterbalanced Lift Truck (Smooth Floors Only);
- Industrial and Mining (Other than Smooth Floors);
- Construction Equipment;
- Off-the-Road and Counterbalanced Lift Truck (Smooth Floors Only);
- Aerial Lift and Mobile Crane; and
- Utility Vehicle and Lawn and Garden Tractor.

OTR tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes OTR tires produced in the subject countries whether mounted on wheels or rims in a subject country or in a third country. OTR tires are covered whether or not they are accompanied by other parts, *e.g.*, a wheel, rim, axle parts, bolts, nuts, etc. OTR tires that enter attached to a vehicle are not covered by the scope.

In addition, specifically excluded from the scope are passenger vehicle and light truck tires, racing tires, mobile home tires, motorcycle tires, all-terrain vehicle tires, bicycle tires, on-road or on-highway trailer tires, and truck and bus tires. 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 prefixes and suffixes included as part of the size designation on their sidewalls:

Prefix letter designations:

AT – Identifies a tire intended for service on All-Terrain Vehicles;

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

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

T – Identifies a tire intended for one-position “temporary use” as a spare only; and

ST – Identifies a special tire for trailers in highway service.

Suffix letter designations:

TR – Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156” or plus 0.250”;

MH – Identifies tires for Mobile Homes;

HC – Identifies a heavy duty tire designated for use on “HC” 15” tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.

Example: 8R17.5 LT, 8R17.5 HC;

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

ST – Special tires for trailers in highway service; and

M/C – 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; aircraft tires; and turf, lawn and garden, and golf tires. Also excluded from the scope are mining and construction tires 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).

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1025, 4011.20.1035, 4011.20.5030, 4011.20.5050, 4011.61.0000, 4011.62.0000, 4011.63.0000, 4011.69.0090, 4011.92.0000, 4011.93.4000, 4011.93.8000, 4011.94.4000, 4011.94.8000, 8431.49.9038, 8431.49.9090, 8709.90.0020, and 8716.90.1020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.4590, 4011.99.8590, 8424.90.9080, 8431.20.0000, 8431.39.0010, 8431.49.1090, 8431.49.9030, 8432.90.0005, 8432.90.0015, 8432.90.0030, 8432.90.0080, 8433.90.5010, 8503.00.9560, 8708.70.0500, 8708.70.2500, 8708.70.4530, 8716.90.5035 and 8716.90.5055. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

## VI. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,<sup>18</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage.<sup>19</sup> We stated that all such comments must be filed within 20 calendar days of publication of the *Initiation Notice*.<sup>20</sup>

On February 23, 2016, we received scope comments from ATC requesting that the Department clarify the scope to be consistent with the scope of the existing orders on OTR tires from the PRC.<sup>21</sup> ATC notes that, in a supplement to the Petitions, Petitioners indicated that the scope of this investigation is intended to cover the exact same merchandise covered by the existing orders on OTR tires from the PRC.<sup>22</sup> According to ATC, the scopes described in *OTR Tires from the PRC Orders* do not contain a limitation on the exclusions for solid tires, aircraft tires, turn, lawn, and garden tires, golf and trailer tires, and other similar tire types. Therefore, ATC argues that the Department should add the following phrase to the scope (italics added to identify proposed additional language):

All tires marked with any of the prefixes or suffixes listed above in their sidewall markings are covered by the scope regardless of their intended use, *unless the tire falls within one of the specific exclusions set forth below*.<sup>23</sup>

ATC argues that this phrase is already included in the scope (regarding those products not marked with one of the 14 prefixes or suffixes listed in the scope) and, therefore, the proposed language neither changes the meaning of the scope nor is in conflict with the intent of the Petitions. Finally, ATC requests that, if the Department does not revise the language of the scope, it issue a clarification memorandum that importers can present to CBP explicitly stating that all exclusions in the latter part of the scope apply even if tires are marked with one of the 14 prefixes or suffixes listed in the scope.<sup>24</sup>

On March 4, 2016, Petitioners submitted rebuttal scope comments, opposing ATC's proposed addition to the language of the scope. According to Petitioners, the ATC proposal would exclude tires from the scope that may be used for "turf, lawn and garden, and golf" applications and also bear one of the 14 prefix or suffix designations listed in the scope. Petitioners state that their intention (both in *OTR Tires from the PRC Orders* and in this investigation) is that the scope exclusion for "turf, lawn and garden, and golf tires" applies only to tires solely used on

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<sup>18</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

<sup>19</sup> See *Initiation Notice*, 81 FR at 7074.

<sup>20</sup> *Id.*

<sup>21</sup> See ATC's Scope Comments, at 2 (citing *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 73 FR 51624 (September 4, 2008); and *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Countervailing Duty Order*, 73 FR 51627 (September 4, 2008) (*OTR Tires from the PRC Orders*)).

<sup>22</sup> See ATC's Scope Comments, at 5-6 (citing to Letter from Petitioners, "Scope Supplement to the Petitions for the Imposition of Antidumping Duties on Imports of Certain New Pneumatic Off-the-Road Tires from India and the People's Republic of China and Countervailing Duties on Imports of Certain New Pneumatic Off-the-Road Tires from India, the People's Republic of China, and Sri Lanka" (January 14, 2016), at 2.)

<sup>23</sup> See ATC's Scope Comments, at 2-3.

<sup>24</sup> *Id.*

vehicles exclusively employed in these applications. As a result, Petitioners assert that they intended to include in the scope any tire with an application other than on a vehicle exclusively used for turf, lawn and garden, and golf applications. Petitioners point out that there are numerous vehicles that may be used in turf, lawn and garden, and golf applications that may also be used in agricultural applications (e.g., compact and sub-compact tractors). Consequently, Petitioners maintain that the Department must deny ATC's proposed scope amendment.<sup>25</sup>

We have considered the request noted above, as well as Petitioners' responsive comments. While the Department has the authority to define or clarify the scope of an investigation, it must exercise this authority in a manner which reflects the intent of the Petitions. Furthermore, the Department generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the Petitions.<sup>26</sup> Thus, absent an overarching reason to modify the scope in the Petitions, the Department accepts the scope as it is currently written.<sup>27</sup> Accordingly, we have made no change to the scope with respect to ATC's request because Petitioners intended that their scope exclusion language cover only certain products and modifying the language of the scope in the manner ATC requests would not reflect the intent of the Petitions.

## VII. DISCUSSION OF METHODOLOGY

### Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether ATC's and BKT's sales of the subject merchandise from India to the United States were made at LTFV, the Department compared the export price ("EP") and constructed export price ("CEP"), as applicable, to the normal value ("NV") as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

#### *A. Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (i.e., the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (i.e., the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

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<sup>25</sup> See Petitioners' Scope Rebuttal Comments.

<sup>26</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products From Canada, 67 FR 15539 (April 2, 2002), and accompanying IDM under Scope Issues (after Comment 49).

<sup>27</sup> *Id.*; see also Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 51788, 51789 (September 5, 2008), unchanged in Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 4913 (January 28, 2009); Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation, 66 FR 49347 (September 27, 2001), and accompanying IDM at Comment 12; and *Mitsubishi Heavy Industries, Ltd. v. U.S.*, 986 F. Supp. 1428 (CIT 1997).

In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>28</sup> The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, or time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the consolidated customer codes reported by ACT and BKT.<sup>29</sup> Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or in the time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one

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<sup>28</sup> See, e.g., *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015) (“*Welded Line Pipe*”).

<sup>29</sup> See Letter from ATC, “Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited’s Response to Sections B through D of the Department’s Questionnaire” (April 21, 2016) at C-20; see also Letter from BKT, “Certain New Pneumatic Off-the-Road Tires from India: Balkrishna Industries Limited’s Section C Questionnaire Response” (April 21, 2016) at C-25-26 (“BKT’s CQR”).

of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and in time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and in time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

## B. Results of the Differential Pricing Analysis

### ATC

For ATC, based on the results of the differential pricing analysis, the Department preliminarily finds that 65.22 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>30</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for ATC.

### BKT

For BKT, based on the results of the differential pricing analysis, the Department preliminarily finds that 69.96 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>31</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for BKT.

## VIII. DATE OF SALE

19 CFR 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration, or foreign like product, the Secretary will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>32</sup>

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<sup>30</sup> See Memorandum to the File from Trisha Tran, "Analysis for the Preliminary Determination of Less-Than-Fair-Value Investigation of Certain New Pneumatic Off-the-Road Tires from India," dated concurrently with this memorandum ("ATC Preliminary Analysis Memorandum").

<sup>31</sup> See Memorandum to the File from Lilit Astvatsatrian, "Analysis for the Preliminary Determination of Less-Than-Fair-Value Investigation of Certain New Pneumatic Off-the-Road Tires from India: Balkrishna Industries Limited," dated concurrently with this memorandum ("BKT Preliminary Analysis Memorandum").

<sup>32</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sale' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.").

ATC and BKT each reported the date of invoice to the first unaffiliated customer as the date of sale for both their home market sales and U.S. sales.<sup>33</sup> ATC and BKT also reported that the invoice date best represents the date of sale because, at that point, the material terms of sale cannot be altered.<sup>34</sup> The Department has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.<sup>35</sup> Therefore, consistent with this practice, the Department preliminarily determines to use the invoice date as the date of sale, unless shipment date preceded the invoice date.

## **IX. PRODUCT COMPARISONS**

In accordance with section 771(16) of the Act, we considered all products produced and sold by ATC and BKT in India during the POI that fit the description in the “Scope of the Investigation” section of this notice to be foreign like products for the purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we have considered all parties’ comments on product characteristics and matched foreign like products based on the physical characteristics reported by ATC and BKT in the following order of importance: rim diameter, overall diameter, width, aspect ratio, tire construction, tread code, load classification system, load rating, body ply fabric, type of belt fabric, tread depth, and tube type. Additionally, we have included product code, tire type, weight, suffix, and speed rating as additional identifiers of the foreign like products but not necessarily part of the product characteristics for model matching purposes.

## **X. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE**

In accordance with section 772(a) of the Act and careful consideration of all parties’ comments, we calculated EP for BKT’s U.S. sales where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation. BKT’s EP sales were directly shipped from India to the first unaffiliated customer and were invoiced accordingly, whereas BKT’s CEP sales were sold through its U.S. affiliates.<sup>36</sup> In accordance with section 772(b) of

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<sup>33</sup> See Letter from ATC, “Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited’s Response to Sections B through D of the Department’s Questionnaire” (April 21, 2016) at B-22 and C-22, BKT’s C-28, and Letter from BKT, “Certain New Pneumatic Off-the-Road Tires from India: Balkrishna Industries Limited’s Section B Questionnaire Response” (April 21, 2016) (“BKT’s BQR”), at 27.

<sup>34</sup> See Letter from ATC, “Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited’s Response to Supplemental Section A of the Department’s Questionnaire” (May 11, 2016) (“ATC’s SAQR”), at Exhibit 35 at A-52 to A-54.

<sup>35</sup> See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying IDM, at Comment 11; and *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 18074, 18079-80 (April 10, 2006), unchanged in *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 4486 (January 31, 2007), and IDM at Comments 4 and 5.

<sup>36</sup> See Letter from BKT, “Certain New Pneumatic Off-the-Road Tires from India: Balkrishna Industries Limited’s

the Act, for the remainder of BKT's U.S. sales and for all of ATC's sales, we used CEP because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with BKT and ATC, and EP methodology, as defined by section 772(a) of the Act, was not otherwise warranted.

Section 772(b) of the Act defines CEP as "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 subsections (c) and (d)." For purposes of this investigation, ATC classified all of its sales as CEP sales and BKT classified a portion of its sales as CEP sales. In accordance with section 772(b) of the Act, we used the CEP methodology for ATC's sales and a portion of BKT's sales to the U.S. market because the merchandise under investigation was sold in the U.S. by a U.S. seller affiliated with the producer. The Department calculated CEP based on packed, delivered prices to unaffiliated purchasers in the United States.

The Department made adjustments to the prices for billing adjustments, discounts, rebates, and early payment discounts, as appropriate. The Department adjusted ATC's and BKT's CEP prices for movement expenses, including foreign inland freight, U.S. brokerage and handling, international ocean freight, international air freight, U.S. warehouse expense, U.S. consignment handling (storage) expenses, U.S. inland freight, U.S. duties, U.S. warehouse transfer costs, and other transfer costs, where appropriate. Additionally, the Department has not treated ATC's and BKT's reported freight revenue, and BKT's insurance revenue, as an addition to ATC's and BKT's prices, respectively, pursuant to 19 CFR 351.401(c). Instead, the Department followed its normal practice by treating freight revenue as an offset to freight costs rather than an addition to U.S. price where freight revenue exceeds freight expenses.<sup>37</sup> In accordance with section 772(d)(1) of the Act, where appropriate, the Department also deducted ATC's or BKT's selling expenses associated with economic activities occurring in the domestic market (India) or the U.S., which includes credit expense, inventory carrying costs incurred in India, indirect selling expenses incurred in India, inventory carrying costs incurred in the U.S., CEP indirect selling expenses incurred in the U.S., and other CEP expenses incurred in the U.S. (commissions, advertising expenses, warranties, direct selling expense, repacking, mounting cost, and lining cost). In accordance with section 772(f) of the Act, the Department calculated the CEP profit rate using the expenses incurred by ATC and its U.S. importer/affiliate, ATA, related to their sales of the foreign like product in the comparison market and their sales of merchandise under consideration in the United States and the profit associated with those sales.<sup>38</sup>

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Supplemental Section C Questionnaire Response" (July 5, 2016) ("BKT's SCQR") at 7 and Exhibits SC-5.

<sup>37</sup> See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012) and accompanying IDM at Comment 3; see also *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less-Than-Fair-Value*, 76 FR 64318 (October 18, 2011) and accompanying IDM at Comment 39 (explaining that where freight revenue earned by a respondent exceeds the freight charge incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services).

<sup>38</sup> See ATC's Preliminary Analysis Memorandum.

The Department has increased U.S. price to account for a duty drawback program used by BKT, in accordance with section 772(c)(1)(B) of the Act. This program was also found to be countervailable in the companion CVD investigation, and the benefit was calculated as the full amount of the duty drawback. Section 772(c)(1)(C) of the Act directs the Department to increase EP or CEP by the amount of the countervailing duty “imposed” on the subject merchandise “to offset an export subsidy.” The basic theory underlying this provision is that in parallel AD and CVD proceedings, if the Department finds that a respondent received the benefits of an export subsidy program, it is presumed the subsidy contributed to lower-priced sales of subject merchandise in the United States market. Thus, the subsidy and dumping are presumed to be related, and the imposition of duties against both would in effect be imposing two duties against the same situation. However, under the circumstances of this case, the Department has made an adjustment to U.S. price pursuant to section 772(c)(1)(B) of the Act, to increase U.S. price “to the level it likely would be absent the duty drawback.” However, we did not make the export subsidy adjustment for BKT because we found its margin, including the duty drawback adjustment in the AD margin program, to be *de minimis*.

## **XI. NORMAL VALUE**

### *A. Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we normally compare the respondent’s volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent’s sale of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that ATC’s and BKT’s aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of subject merchandise. Therefore, we used home market sales as the basis for NV for ATC and BKT, in accordance with section 773(a)(1)(B) of the Act.

### *B. Affiliated Party Transactions and Arm’s-Length Test*

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm’s-length prices.<sup>39</sup> The Department excludes home market sales to affiliated customers that are not made at arm’s-length prices from its margin analysis because the Department considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d), and our practice, “the Department

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<sup>39</sup> See 19 CFR 351.403(c).

may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."<sup>40</sup>

During the POI, ATC and BKT did not make sales of OTR tires in the home market to affiliated parties, as defined in section 771(33) of the Act.<sup>41</sup> Consequently, sales were not tested to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c)

### C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>42</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>43</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>44</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>45</sup>

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>46</sup>

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<sup>40</sup> See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003).

<sup>41</sup> See Letter from ATC, "Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Response to Sections B through D of the Department's Questionnaire," dated April 21, 2016 at B-4; see also BKT's BQR, at 25.

<sup>42</sup> See 19 CFR 351.412(c)(2).

<sup>43</sup> *Id.*; see also *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) ("*OJ from Brazil*"), and accompanying IDM at Comment 7.

<sup>44</sup> Where NV is based on constructed value ("CV"), we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative ("SG&A") expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>45</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>46</sup> See, e.g., *OJ from Brazil* and accompanying IDM at Comment 7.

In this investigation, we obtained information from ATC and BKT regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution.<sup>47</sup> Our LOT findings are summarized below.

## ATC

In the home market, ATC reported that it made sales through two channels of distribution: (1) delivered to customer; or (2) picked up from factory.<sup>48</sup> According to ATC, these two channels in the home market constitute a single LOT.<sup>49</sup>

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support. ATC reported selling functions for sales to its home market customers in each category, either at a low, medium or high level of activity.<sup>50</sup> In examining ATC's questionnaire responses and the home market sales database, the Department finds that the selling activities performed by ATC in the home market channels do not significantly differ.<sup>51</sup> Accordingly, the Department preliminarily finds that ATC performed the same selling functions at the same relative level of intensity for all of its home market sales, and that all home market sales are at the same LOT. With respect to the U.S. market, ATC reported that it sold subject merchandise through six channels of distribution: (1) direct shipment from factory; (2) delivered to customer (from warehouse); (3) pickup at warehouse; (4) delivered to customer (from mounter); (5) pickup at mounter/liner; and (6) pick up at the port in India.<sup>52</sup> As with the home market, ATC reported selling functions for sales to its U.S. customers in each of

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<sup>47</sup> See Letter from ATC, "Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Response to Supplemental Section A of the Department's Questionnaire" (May 11, 2016) at Exhibit 35; see also Letter from BKT, "Certain New Pneumatic Off-the-Road Tires from India: Balkrishna Industries Limited's Section A Questionnaire Response" (March 31, 2016) ("BKT's AQR"), A-19-22.

<sup>48</sup> See Letter from ATC, "Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Response to Sections B through D of the Department's Questionnaire" (April 21, 2016) at B-22. According to ATC, in a small number of cases, ATC's terms of sale were pick from factory, but ATC was required to deliver those goods to the customer, typically in order to compensate for an error committed by ATC at the time of pick-up. These sales were marked "03" in the channel of distribution field.

<sup>49</sup> See Letter from ATC, "Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Response to Sections B through D of the Department's Questionnaire" (April 21, 2016) at B-32.

<sup>50</sup> The selling functions listed by ATC are: Sales Forecasting, Strategic/Economic Planning, Personnel Training/Exchange, Engineering Services, Advertising, Sales Promotion, Distributor/Dealer Training, Procurement/Sourcing Services, Packing, Inventory Maintenance, Order Input/Processing, Direct Sales Personnel, Market Research, Technical Assistance, Provide Rebates, Provide Cash Discounts, Pay Commissions, Provide Warranty Service, Provide Guarantees, Provide After-Sales Services, Perform Repacking, Provide Freight and Delivery, and Provide Post-Sale Warehousing. See Letter from ATC, "Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Response to Section A of the Department's Questionnaire" (March 31, 2016) at A-15 to A-19 ("ATC's AQR"); see also ATC's SAQR, at Exhibit 35.

<sup>51</sup> *Id.* For instance, Inventory Maintenance, Order Input/Processing, and Direct Sales Personnel selling functions were performed at a medium level of intensity in all channels.

<sup>52</sup> See Letter from ATC, "Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Response to the Department's Sections B and C Third Supplemental Questionnaire" (July 13, 2016) ("ATC's July 13, 2016 submission"); see also Letter from ATC, "Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Response to Sections B through D of the Department's Questionnaire" (April 21, 2016) at C-21.

the four selling function categories, either at a low, medium or high level of activity.<sup>53</sup> According to ATC, the selling activities in each of these channels do not vary significantly and constitute a single U.S. CEP LOT.<sup>54</sup> Based on the selling function categories noted above, we find that ATC performed the same selling functions at a similar relative level of intensity for all of its U.S. sales.<sup>55</sup> Accordingly, we preliminarily determine that all U.S. sales are at the same CEP LOT.

Finally, we compared the home market LOT to the U.S. market CEP LOT, and found that the selling functions performed by ATC with respect to its home market sales are significantly greater in number and intensity than the selling activities performed by ATC for sales in the United States. The record shows that ATC performs 13 selling functions for its home market sales that it does not perform for sales through ATA.<sup>56</sup> In the five instances in which ATC performs the same selling functions, ATC generally performs the same selling function with a higher level of intensity (except for freight and delivery) with respect to its home market sales than for sales to ATA.<sup>57</sup>

The Department also considered the role played by the U.S. affiliate, ATA, to be relevant in its decision concerning LOT.<sup>58</sup> In prior cases, the Department found that evidence showing that the U.S. affiliate performs significant selling activities in the U.S. market supports the conclusion that the foreign producer's sales in the home market are made at a more advanced LOT than CEP sales.<sup>59</sup> Record evidence demonstrates that ATA performed the majority of the selling activities in the U.S. market that are handled by ATC in India.<sup>60</sup> As such, we considered the home market

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<sup>53</sup> The specific selling functions listed for the home market and U.S. market are the same. See ATC's SAQR at Exhibit 35.

<sup>54</sup> See Letter from ATC, "Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Response to Sections B through D of the Department's Questionnaire" (April 21, 2016) at C-32; see ATC's AQR, at A-15 to A-19; see also ATC's SAQR, at A-27 and Exhibit 35.

<sup>55</sup> For instance, Inventory Maintenance, Order Input/Processing, Direct Sales Personnel, and Perform Repacking selling functions were performed for the final unaffiliated customer at a medium level of intensity in all channels, and "Provide After Sales Service" was performed at a low level of intensity. See ATC's SAQR, at Exhibit 35.

<sup>56</sup> ATC's SAQR, at Exhibit 35. These selling services are Sales Forecasting, Strategic/Economic Planning, Personnel Training/Exchange, Advertising, Sales Promotion, Distributor/Dealer Training, Inventory Maintenance, Direct Sales Personnel, Market Research, Technical Assistance, Provide Rebates, Provide Warranty Service, and Provide After-Sales Services.

<sup>57</sup> *Id.* These five selling services are Engineering Services, Packing, Order Input/Processing, Provide Cash Discounts, and Provide Freight and Delivery.

<sup>58</sup> See, e.g., *Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 45024, 45029 (August 6, 2006) (finding that in the home market the respondent made sales "further down the chain of distribution by providing certain downstream selling functions that are normally performed by the affiliated resellers in the U.S. market"), unchanged in *Stainless Steel Sheet and Strip in Coils from Germany; Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 74897 (December 13, 2006).

<sup>59</sup> See *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009) and accompanying IDM at Comment 8.

<sup>60</sup> These are the thirteen selling functions that that ATC does not perform on behalf of its sales to ATA, as noted above (*i.e.*, Sales Forecasting, Strategic/Economic Planning, Personnel Training/Exchange, Advertising, Sales Promotion, Distributor/Dealer Training, Inventory Maintenance, Direct Sales Personnel, Market Research, Technical Assistance, Provide Rebates, Provide Warranty Service, and Provide After-Sales Services.) See ATC's SAQR, at Exhibit 35.

sales to be at a different LOT and at a more advanced state of distribution than the U.S. CEP LOT.

Because the home market LOT was different from the U.S. CEP LOT, the Department could not match the sales at the same LOT in the home market. Moreover, because there was only one LOT in ATC's home market, there is no basis for a LOT adjustment. As such, the Department made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. The Department determined the CEP offset based on the sum of home market indirect selling expenses, plus the amount of U.S. indirect selling expenses deducted from CEP.

### BKT

BKT made home market sales through two channels of distribution: 1) direct sales and shipment to the same customer; and 2) direct sales and shipment to different customers.<sup>61</sup> BKT reported a single home market LOT.<sup>62</sup> BKT's home market selling activities can be generally grouped into four selling functions: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support.<sup>63</sup> We found that the selling activities performed by BKT in the home market channels do not significantly differ. Accordingly, the Department preliminarily finds that all home market sales by BKT are at the same LOT.

With respect to the U.S. market, BKT reported that it sold subject merchandise through three channels of distribution: 1) direct sales to unaffiliated U.S. customer; 2) direct shipment to unaffiliated customers but BKT's U.S. affiliate was the importer of the record and made the sales to unaffiliated U.S. customers; and 3) U.S. warehouse sales from the U.S. affiliate to the unaffiliated customer.<sup>64</sup> We have found no evidence that the selling activities between BKT's channels of distribution in the U.S. differ and thus have preliminarily determined that BKT's sales to the U.S. market are at the same LOT.

We compared the LOTs in the home market to the LOT in the U.S. market and found the LOT in the U.S. market to be comparable to the home market LOT. While the level of intensity of selling activities in the home market LOT is at times higher than the level of intensity of selling activities in the U.S. LOT, the types of selling activities undertaken in the two LOTs (*e.g.*, sales forecasting, engineering services, direct sales, market research, technical assistance, and after-sale services) are typically the same.<sup>65</sup> Furthermore, the types of customers in these two LOTs are identical. For the reasons stated above, we preliminarily find that all home market sales are at the same LOT as the LOT for U.S. sales, and because we were able to match all U.S. sales to home market sales at a comparable LOT, no LOT adjustment or CEP offset is warranted.

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<sup>61</sup> See BKT's BQR, at 26.

<sup>62</sup> *Id.*, at 37.

<sup>63</sup> See Letter from BKT, "Certain New Pneumatic Off-the-Road Tires from India: Balkrishna Industries Limited's Supplemental Section A Questionnaire Response" (May 31, 2016) at Exhibit 8.

<sup>64</sup> See BKT's CQR, at C-27.

<sup>65</sup> See BKT's SCQR, at SC-5.

#### D. *Cost of Production Analysis*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than cost of production ("COP").<sup>66</sup> The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC.<sup>67</sup> Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. The TPEA requires the Department to request CV and COP information from respondent companies in all AD proceedings.<sup>68</sup> Accordingly, the Department requested this information from ATC and BKT.<sup>69</sup> We examined ATC's and BKT's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

##### 1. Calculation of COP

We relied on the COP data as submitted by ATC and BKT and did not make any adjustments.

##### 2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, movement charges, actual direct and indirect selling expenses, and packing expenses.

##### 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and

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<sup>66</sup> See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) ("TPEA").

<sup>67</sup> See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

<sup>68</sup> *Id.*, 80 FR at 46794-95.

<sup>69</sup> See Letters from Robert Bolling, Program Manager, Office IV, AD/CVD Operations to ATC and BKT "Investigation of Certain New Pneumatic Off-the-Road Tires from India: Antidumping Duty Questionnaire" (March 3, 2016).

in “substantial quantities.” Where 20 percent or more of a respondent’s sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in “substantial quantities,” in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of ATC’s and BKT’s home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### E. *Calculation of NV Based on Comparison-Market Prices*

For those comparison products for which there were an appropriate number of sales at prices above the COP for ATC and BKT, we based NV on home market prices. We calculated NV based on packed, ex-factory or delivered prices to unaffiliated customers in India.

We made deductions from the starting price, where appropriate, for billing adjustments, early payment discounts, other discounts, and rebates, in accordance with 19 CFR 351.401(c). We also made deductions for inland freight expenses, under section 773(a)(6)(B) of the Act. In addition, we made adjustments pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for home market credit expenses and warranties. Where commissions were granted in the home market but not in the U.S. market, we made an upward adjustment to NV for the lesser of: (1) the amount of commission paid in the home market; or (2) the amount of indirect selling expenses (including inventory carrying costs) incurred for sales to the U.S. market.<sup>70</sup> We also deducted home market packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.<sup>71</sup>

## **XII. CURRENCY CONVERSION**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

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<sup>70</sup> See 19 CFR 351.410(e).

<sup>71</sup> See 19 CFR 351.411(b).

### **XIII. ITC NOTIFICATION**

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary determination. In addition, we are making all non-privileged and non-proprietary information relating to this investigation available to the ITC. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 735(b)(2) of the Act, if our final determination is affirmative, the ITC will 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 from India before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

### **XIV. DISCLOSURE AND PUBLIC COMMENT**

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.<sup>72</sup> Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS") no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.<sup>73</sup>

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>74</sup> This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within thirty days after the publication of this preliminary determination in the *Federal Register*.<sup>75</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, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time, and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.<sup>76</sup> Electronically filed documents must be received successfully in their entirety by 5:00 PM Eastern Time,<sup>77</sup> on the due dates established above.

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<sup>72</sup> See 19 CFR 351.224(b).

<sup>73</sup> See 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

<sup>74</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>75</sup> See 19 CFR 351.310(c).

<sup>76</sup> See 19 CFR 351.303(b)(2)(i).

<sup>77</sup> See 19 CFR 351.303(b)(1).

**XV. VERIFICATION**

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

**XVI. CONCLUSION**

We recommend applying the above methodology for this preliminary determination.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

\_\_\_\_\_  
Date