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February 26, 2013

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Import Administration

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

**SUBJECT:** Decision Memorandum for Preliminary Results of Antidumping  
Duty New Shipper Review Pertaining to Trelleborg Wheel Systems  
(Xingtai) China, Co. Ltd.: Certain New Pneumatic Off-the-Road  
Tires from the People's Republic of China

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## SUMMARY

In response to a request from Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. (“Trelleborg Wheel Systems China”), the Department of Commerce (“Department”) is conducting a new shipper review of the antidumping duty order on certain new pneumatic off-the-road tires (“OTR tires”) from the People’s Republic of China (“PRC”) for the period of review (“POR”) September 1, 2011, through February 29, 2012. The Department has preliminarily determined that Trelleborg Wheel Systems China did not sell subject merchandise in the United States at prices below normal value (“NV”).

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”).

## Background

The notice announcing the antidumping duty order on OTR tires from the PRC was published in the *Federal Register* on September 4, 2008.<sup>1</sup> On March 30, 2012, we received a timely request

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<sup>1</sup> See *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).



for a new shipper review from Trelleborg Wheel Systems China.<sup>2</sup> On May 4, 2012, the Department initiated a new shipper review of the antidumping duty order on OTR tires from the PRC.<sup>3</sup>

On October 9, 2012, the Department extended the deadline for the preliminary results by 120 days until February 24, 2013.<sup>4</sup> As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of this review is now February 26, 2013.<sup>5</sup>

### Scope of the Order

The products covered by the order 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>6</sup> combine harvesters,<sup>7</sup> agricultural high clearance sprayers,<sup>8</sup> industrial tractors,<sup>9</sup> log-skidders,<sup>10</sup> agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;<sup>11</sup> (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,<sup>12</sup> front end loaders,<sup>13</sup> dozers,<sup>14</sup> lift trucks, straddle

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<sup>2</sup> See Letter from Trelleborg Wheel Systems China entitled “New Shipper Review Request of Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.: New Pneumatic Off-The-Road Tires from the People’s Republic of China,” dated March 29, 2012 (“NSR Request”).

<sup>3</sup> See *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Initiation of New Shipper Review*, 77 FR 26508 (May 4, 2012) (“Initiation Notice”).

<sup>4</sup> See Memorandum to Christian Marsh entitled “*Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Extension of Time Limit for the Preliminary Results of the New Shipper Review*,” dated October 9, 2012.

<sup>5</sup> See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration entitled “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane,” dated October 31, 2012.

<sup>6</sup> Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

<sup>7</sup> Combine harvesters are used to harvest crops such as corn or wheat.

<sup>8</sup> Agricultural sprayers are used to irrigate agricultural fields

<sup>9</sup> Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

<sup>10</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>11</sup> Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver’s shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

<sup>12</sup> Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

carriers,<sup>15</sup> graders,<sup>16</sup> mobile cranes,<sup>17</sup> 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. The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within 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 order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type<sup>18</sup> 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;

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<sup>13</sup> Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

<sup>14</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>15</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>16</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 on to which asphalt or other paving material will be laid.

<sup>17</sup> *I.e.*, “on-site” mobile cranes designed for off-highway use.

<sup>18</sup> While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

- LT - Identifies a tire intended primarily for service on light trucks; and,
- ST - Identifies a special tire for trailers in highway service.

Suffix letter designations:

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

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

## DISCUSSION OF THE METHODOLOGY

### Bona fides Sale Analysis

For this review, consistent with the Department’s practice, the Department investigated the *bona fide* nature of the sale(s) made by Trelleborg Wheel Systems China during the POR. In evaluating whether or not a sale in a new shipper review is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm’s-length basis.<sup>19</sup> Accordingly, the Department considers a number of factors in its *bona fides* analysis, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.”<sup>20</sup>

The Department preliminarily finds that the sale(s) of subject merchandise made by Trelleborg Wheel Systems China were made on a *bona fide* basis. Specifically, the Department

<sup>19</sup> See, e.g., *Tianjin Tancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005).

<sup>20</sup> See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic From the People’s Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).

preliminarily finds that: (1) the timing of the sale(s) by itself does not indicate that the sale(s) might not be *bona fide*; (2) record evidence indicates that the price and quantity of the sale(s) are commercially reasonable and not atypical of normal business practices of OTR tires exporters; (3) Trelleborg Wheel Systems China and its U.S. affiliate, Trelleborg Wheel Systems Americas, did not incur any extraordinary expenses arising from the transaction(s); (4) the goods were resold by Trelleborg Wheel Systems Americas' unaffiliated U.S. customer with a margin; and (5) the new shipper sale(s) were made between Trelleborg Wheel Systems Americas and its unaffiliated U.S. customer at arm's length.<sup>21</sup>

The Department does not believe Trelleborg Wheel Systems Americas' unaffiliated U.S. customer's failure to substantiate its claim that it resold the goods in question at a profit overcomes the totality of evidence described above that demonstrate Trelleborg Wheel Systems China's sale(s) are *bona fide*.<sup>22</sup> Therefore, the Department has preliminarily found that Trelleborg Wheel Systems China's sale(s) of subject merchandise to the United States were *bona fide* for the purposes of this new shipper review.

### Nonmarket Economy Country

The Department considers the PRC to be a nonmarket economy ("NME") country.<sup>23</sup> 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. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

### Separate Rates

Pursuant to section 771(18)(C) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.<sup>24</sup>

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.<sup>25</sup> It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To

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<sup>21</sup> See Memorandum to Melissa Skinner entitled "Antidumping Duty New Shipper Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: *Bona Fide* Sales Analysis for Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.," dated concurrently with this memorandum.

<sup>22</sup> See *id.*

<sup>23</sup> See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

<sup>24</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006).

<sup>25</sup> See *Initiation Notice*, 77 FR at 26508-09.

establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,<sup>26</sup> as amplified by *Silicon Carbide*.<sup>27</sup> However, if the Department determines that a company is wholly foreign-owned or located in a market economy (“ME”), then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>28</sup>

The Department received a completed response to the Section A portion of the NME antidumping questionnaire from Trelleborg Wheel Systems China (including two supplemental responses), which contained information pertaining to its eligibility for a separate rate.<sup>29</sup> Trelleborg Wheel Systems China’s submission indicates that Trelleborg Wheel Systems China is wholly foreign-owned.<sup>30</sup> Therefore, the Department did not conduct a separate rate analysis.

### Surrogate Country and Surrogate Value Data

On July 26, 2012, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value (“SV”) data.<sup>31</sup> The Department received surrogate country and SV comments and data from Titan Tire Corporation (“Petitioner”) and Trelleborg Wheel Systems China.<sup>32</sup>

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<sup>26</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”).

<sup>27</sup> See *Notice of 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>28</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People’s Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

<sup>29</sup> See Trelleborg Wheel Systems China’s response entitled “Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.’s Section A Questionnaire Response for the New Shipper Review of New Pneumatic Off-The-Road Tires from the People’s Republic of China,” dated May 31, 2012 (“Trelleborg Wheel Systems China’s Section A”); see also Trelleborg Wheel Systems China’s response entitled “Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.’s Supplemental Section A Questionnaire Response for the New Shipper Review of New Pneumatic Off-The-Road Tires from the People’s Republic of China,” dated October 25, 2012; and “Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.’s Second Supplemental Section A and C Questionnaire Response for the New Shipper Review of New Pneumatic Off-The-Road Tires from the People’s Republic of China,” dated January 16, 2013.

<sup>30</sup> See Trelleborg Wheel Systems China’s Section A at 2 and Exhibit A-4.

<sup>31</sup> See the Department’s Letter to All Interested Parties entitled “New Shipper Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.: Request for Comments on the Selection of a Surrogate Country and Surrogate Values,” dated July 26, 2012 (“Surrogate Country Memo”).

<sup>32</sup> See Letter from Trelleborg Wheel Systems China entitled “New Pneumatic Off-the-Road Tires from the PRC: Provision of Surrogate Values and Comments on Surrogate Country Selection of Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.,” dated August 6, 2012 (“Trelleborg Wheel Systems China’s SV Submission”); Letter from Petitioner entitled “New Pneumatic Off-The Road Tires from the People’s Republic of China (New Shipper Review): Petitioner’s Comments Re Surrogate Country Selection,” dated August 10, 2012; Letter from Petitioner entitled “New Pneumatic Off-The Road Tires from the People’s Republic of China (New Shipper Review): Petitioner’s Surrogate Value Submission,” dated August 20, 2012 (“Petitioner’s SV Submission”); Letter from TWS China entitled “Surrogate Country and Surrogate Value Rebuttal Letter of Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.: New Pneumatic Off-The-Road Tires from the People’s Republic of China,” dated August 30, 2012; and letter from Petitioner entitled “New Pneumatic Off-The Road Tires from the People’s Republic of China (New Shipper Review): Petitioner’s Rebuttal Comments re Surrogate Country and Values,” dated August 30, 2012.

## Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOP"), valued in a surrogate ME 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 ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.<sup>33</sup> The Department determined that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are countries whose per capita gross national incomes ("GNI") are comparable to the PRC in terms of economic development.<sup>34</sup> The sources of the SVs we have used in this investigation are discussed under the "Normal Value" section below.

Petitioner, in its SV comments, submits that the Department should select Thailand as the primary surrogate country, noting that Thailand is a significant producer of comparable merchandise with publicly available data with which to obtain SVs. Citing to a recent preliminary determination in the third antidumping duty administrative review of OTR tires from the PRC,<sup>35</sup> Petitioner notes that Thailand provides readily available data for the primary inputs used to produce subject merchandise. Moreover, Petitioner also asserts that Thailand is a net exporter of identical and comparable merchandise (*i.e.*, OTR tires at the 6-digit Harmonized Tariff Schedule ("HTS") level), while Indonesia is a net exporter of comparable merchandise, but a net importer of identical merchandise.

In its SV comments Trelleborg Wheel Systems China proposes that the Department select Indonesia as the primary surrogate country, because Indonesia is a significant producer of comparable merchandise (*i.e.*, new pneumatic tires, HTS 4011) and because there is reliable data from Indonesia available to value FOPs. Trelleborg Wheel Systems China also notes that the Department has used Indonesia as the primary surrogate country in recent cases involving imports from the PRC.<sup>36</sup> Additionally, TWS China contends that Thailand would not make a good candidate for surrogate country because natural rubber, the primary input in subject merchandise, would need to be valued using information reported in the International Rubber Consortium's website, a source Trelleborg Wheel Systems China alleges is questionable and not sufficiently transparent.

## Economic Comparability

As explained in our Surrogate Country Memo, the Department considers Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine all comparable to the PRC in terms of

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<sup>33</sup> See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("Policy Bulletin").

<sup>34</sup> See Surrogate Country Memo.

<sup>35</sup> See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Antidumping Duty Administrative Review; 2010-2011*, 77 FR 61387 (October 9, 2012).

<sup>36</sup> See, *e.g.*, *Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012) ("Steel Wheels from the PRC").

economic development.<sup>37</sup> Accordingly, unless we find that all of these countries are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, or we find that another equally comparable country is an appropriate surrogate, we will rely on data from one of these countries.<sup>38</sup> Therefore, we consider all seven countries identified in the Surrogate Country Memo as having met this prong of the surrogate country selection criteria.

### Significant Producers of Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the Policy Bulletin for guidance on defining comparable merchandise. The Policy Bulletin states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."<sup>39</sup> Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.<sup>40</sup> Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.<sup>41</sup> "In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise."<sup>42</sup> In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.<sup>43</sup>

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<sup>37</sup> See Surrogate Country Memo.

<sup>38</sup> See, *e.g.*, *Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order In Part; 2010-2011*, 78 FR 2363 (January 11, 2013), and Memorandum entitled "Decision Memorandum for Preliminary Results of 2010- 2011 Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China," dated January 2, 2013, at 6..

<sup>39</sup> See *Policy Bulletin*, at 2.

<sup>40</sup> The *Policy Bulletin* also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.*, at note 6.

<sup>41</sup> See *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65676 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").

<sup>42</sup> See *Policy Bulletin*, at 2.

<sup>43</sup> *Id.* at 3.

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.<sup>44</sup> Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”<sup>45</sup> it does not preclude reliance on additional or alternative metrics.

In this case, because production data of comparable merchandise was not available, we analyzed exports of comparable merchandise from both Indonesia and Thailand, as a proxy for production data. We obtained export data using the Global Trade Atlas (“GTA”) for the following HTS categories: 4011.20: New Pneumatic Tires, Of Rubber, Of A Kind Used On Buses Or Trucks; 4011.61: New Pneumatic Tires Or Rubber, Having Herring-Bone Or Similar Tread, Of A Kind Used On Agriculture Or Forestry Vehicles And Machines; 4011.62: New Pneumatic Tires Of Rubber, Herring-Bone Or Sim. Tread, Used On Construction/Industrial Vehicles, Rim Size No More Than 61 Cm, 4011.63: New Pneumatic Tires Of Rubber, Herring-Bone Or Sim. Tread, Used On Construction/Industrial Vehicles, Rim Size Exceeding 61 Cm; 4011.69: New Pneumatic Tires Of Rubber, Having Herring-Bone Or Similar Tread, Nesoi; 4011.92: New Pneumatic Tires, Of Rubber, Of A Kind Used On Agricultural Or Forestry Vehicles And Machines; 4011.93: New Pneumatic Tires, Of Rubber, Of A Kind Used On Construction/Industrial Handling Vehicles/Machines & Having Rim Size < 61 Cm; 4011.94: New Pneumatic Tires, Of Rubber, Of A Kind Used On Construction/Industrial Handling Vehicles/Machines And Having A Rim Size > 61 Cm.

Both Indonesia and Thailand had significant exports of HTS categories included in the scope of the order, although only Thailand had net exports of subject merchandise during the POR.<sup>46</sup> Because neither of the potential surrogate countries have been definitively disqualified through the above analysis, the Department looks to the availability of SV data to determine the most appropriate surrogate country.

#### Data Availability

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input. There is no hierarchy among these criteria. It is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.<sup>47</sup> In this case, because there are neither data nor surrogate financial statements for Colombia, Peru, South Africa, or Ukraine on the record, these countries will not be considered for primary surrogate country selection purposes at this time. Thus, the Department is left with Thailand or Indonesia as a potential surrogate country.

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<sup>44</sup> See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

<sup>45</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

<sup>46</sup> See Memorandum to the file through Eugene Degnan entitled “New Shipper Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Results Surrogate Value Memorandum,” dated concurrently with this memorandum (“Prelim Surrogate Value Memo”), at 1 - 2.

<sup>47</sup> See *Policy Bulletin*.

Indonesia has good quality data available for all raw materials in GTA. Thailand has good quality data available for all raw materials except natural rubber, the primary input in OTR tires. During the POR, Thailand did not import the type of natural rubber Trelleborg Wheel Systems China uses, so Petitioner placed on the record natural rubber data from the website of the International Rubber Consortium, an inter-governmental organization tasked with the oversight and protection of the rubber markets in three countries, including Indonesia and Thailand.<sup>48</sup> However, the record is unclear as to how the data are calculated and whether they represent prices of actual sales transactions or if they are commodities indices.

Petitioner placed two complete financial statements from Thailand onto the record.<sup>49</sup> However, one of the financial statements reports a negative profit, a factor disfavoring its use.<sup>50</sup> The other Thai financial statements are for a manufacturer of comparable merchandise.<sup>51</sup> Trelleborg Wheel Systems China placed two complete financial statements from Indonesia onto the record, although one was largely illegible and therefore un-useable.<sup>52</sup> The other set of financial statements is for a manufacturer of identical merchandise.<sup>53</sup> After examining the useable Indonesian and Thai financial statements, the Department has determined that the legible set of financial statements from Indonesia is preferable, as it is for a manufacturer of identical merchandise and reports a positive profit.

The Department finds Indonesia to be a reliable source for SVs because Indonesia is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data for all inputs. Given the above facts, the Department has selected Indonesia as the primary surrogate country for this review.<sup>54</sup> A detailed explanation of the SVs is provided below in the “Normal Value” section of this notice.

### Date of Sale

19 CFR 351.401(i) states that:

In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied

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<sup>48</sup> See Petitioner’s SV Submission, at Attachment 2.

<sup>49</sup> See *id.*, at Attachments 4 and 5.

<sup>50</sup> See, e.g., *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 28.

<sup>51</sup> See Petitioner’s SV Submission at Attachment 5.

<sup>52</sup> See Trelleborg Wheel Systems China’s SV Submission, at Exhibit 6.

<sup>53</sup> See *id.*, at Exhibit 5.

<sup>54</sup> See Prelim Surrogate Value Memo.

that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>55</sup>

After examining the questionnaire responses and the sales documentation placed on the record by Trelleborg Wheel Systems China, we preliminarily find that the invoice date is the most appropriate date of sale for Trelleborg Wheel Systems China because record evidence indicates that, although the merchandise was shipped before the invoice date, the U.S. customer ordered the merchandise, thereby establishing the material terms of sale, after the merchandise was imported into the United States by Trelleborg Wheel Systems China's affiliate, Trelleborg Wheel Systems Americas.<sup>56</sup>

### Fair Value Comparisons

To determine whether Trelleborg Wheel Systems China's sales of OTR tires to the United States were made at less than fair value, we compared constructed export price ("CEP") to NV, as described in the "U.S. Price" and "Normal Value" sections below, pursuant to section 771(35) of the Act. In these preliminary results, the Department applied the average-to-average comparison methodology adopted in the *Final Modification for Reviews*.<sup>57</sup> In particular, the Department compared monthly, weighted-average CEPs with monthly, weighted-average NVs, and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

### U.S. 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 772(b) of the Act, we used CEP for Trelleborg Wheel Systems China's sales because the sales were made by Trelleborg Wheel Systems Americas, Trelleborg Wheel Systems China's U.S. affiliate in the United States.

We calculated CEP based on the delivered price to the unaffiliated purchaser 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, and selling expenses in the U.S. market. 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

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<sup>55</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale).

<sup>56</sup> See Trelleborg Wheel Systems China's Section A at page 15 and Exhibit A-8.

<sup>57</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) ("*Final Modification for Reviews*").

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. TWS Americas has identified numerous indirect selling expenses it claims should be excluded from the total indirect selling expense reported because the expenses were not incurred during the sale of subject merchandise. For the preliminary results, the Department has excluded the indirect selling expenses at issue. However, we will issue a post-preliminary supplemental questionnaire to Trelleborg Wheel Systems China requesting that it provide further substantiation for its claim.

### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department based NV on FOPs reported by Trelleborg Wheel Systems China for materials, energy, and labor.

### Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by Trelleborg Wheel Systems China, the Department calculated NV based on the FOPs reported by Trelleborg Wheel Systems China for the POR. The Department used Indonesian import data and other publicly available Indonesian sources in order to calculate SVs for Trelleborg Wheel Systems China's FOPs. To calculate NV, the Department multiplied Trelleborg Wheel Systems China's reported per-unit FOP quantities by publicly available SVs.<sup>58</sup> The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.<sup>59</sup>

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Indonesian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United*

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<sup>58</sup> See Prelim Surrogate Value Memo, at Attachment 1.

<sup>59</sup> See, e.g., *Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

*States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, and the Department converted all applicable FOPs to a per-kilogram basis.

Furthermore, with regard to the Indonesian import-based SVs, 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, India, South Korea, and Thailand may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.<sup>60</sup> Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>61</sup> Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.<sup>62</sup> Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.<sup>63</sup> Therefore, we have not used prices from these countries either in calculating the Indonesian import-based SVs or in calculating ME input values.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.<sup>64</sup> Where the Department finds ME purchases to be of significant quantities (*i.e.*, 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market*

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<sup>60</sup> See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

<sup>61</sup> See, e.g., *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 Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

<sup>62</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); see also *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June 4, 2007), unchanged in *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).

<sup>63</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005).

<sup>64</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

*Economy Inputs*,<sup>65</sup> the Department uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.<sup>66</sup> When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 33 percent threshold. Information reported by Trelleborg Wheel Systems China demonstrates that certain inputs were sourced from an ME country and paid for in ME currencies.<sup>67</sup> The Department used its ME purchases methodology (discussed above) to value Trelleborg Wheel Systems China's ME purchases; where appropriate, freight expenses were added to the ME prices of the inputs.

The Department used Indonesian Import Statistics from GTA to value all raw materials that Trelleborg Wheel Systems China used to produce subject merchandise during the POR.<sup>68</sup>

The Department valued water using the rate for large hotels, highrise buildings, banks, and factories as published in the United Nations Development Program's Human Development Report 2006 – "Disconnected: Poverty, Water Supply and Development in Jakarta, Indonesia."

The Department valued electricity using the average electricity rate for industry from the Indonesian Ministry of Energy and Mineral Resources publication entitled "2010 Handbook of Energy & Economic Statistics of Indonesia."<sup>69</sup> These electricity rates represent actual country-wide, publicly-available information on electricity rates charged to industry in Indonesia.

The Department valued steam using the cost of natural gas reported by the American Chemistry Council and calculating a ratio of steam volume to natural gas volume. In doing so, we followed the methodology used in the calculation of the antidumping duty margins pursuant to the remand order of the U.S. Court of International Trade 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).

The Department valued brokerage and handling costs using a price list of procedures necessary to export a standardized cargo of goods in a 20 foot container from Indonesia. The price list (for 2010) is published by the World Bank in *Doing Business 2011: Indonesia*; it is compiled based

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<sup>65</sup> See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-18 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

<sup>66</sup> *Id.*

<sup>67</sup> See Letter from TWS China entitled "Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.'s Section C and D Questionnaire Response for the New Shipper Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated July 3, 2012, at Exhibits D-4, D-7.

<sup>68</sup> See Prelim Surrogate Value Memo at Attachment 1.

<sup>69</sup> See *id.* at Attachment 5.

on a survey of the procedural requirements for exporting a standard shipment of goods by ocean transport from Indonesia.

The Department valued the cost of transporting materials by truck using Indonesian freight rates that were published by the Indonesian freight forwarder, PT. Mantap Abiah Abadi, for the month of September 2011. Rates were given on a per kilogram basis, by city; we used Google Maps to calculate the overland trip distance between each city and Jakarta.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.<sup>70</sup> In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (“ILO”) Yearbook of Labor Statistics (“Yearbook”).

In these preliminary results, because Indonesia does not report labor data to the ILO under Chapter 6A, we are unable to use ILO’s Chapter 6A data to value the respondents’ labor wage and instead will use the industry-specific wage rate using earnings or wage data reported under ILO’s Chapter 5B. The labor rate category which most closely matches OTR tires is ISIC-Revision 3 “Division: 25 - Manufacture of Rubber and Plastics Products.” Indonesia has Chapter 5B, Revision 3 data available at the two-digit detail level.

To value factory overhead, selling, general, and administrative expenses, and profit, the Department used the audited financial statements, for the year ending December 31, 2011, of Indonesian tire producer PT Gajah Tunggal Tbk.<sup>71</sup>

### Currency Conversion

Where necessary, the Department 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 date of the U.S. sale, as certified by the Federal Reserve Bank.

### Adjustment Under Section 777A(f) of the Act

The OTR tires antidumping duty order was established with a companion countervailing duty order. As a result, the Department gave Trelleborg Wheel Systems China an opportunity to adjust its weighted-average dumping margin pursuant to section 777A(f). Because Trelleborg Wheel Systems China did not avail itself of the opportunity provided by the Department to submit information concerning its eligibility for the adjustment to its weighted-average dumping margin,<sup>72</sup> no adjustment will be made.

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<sup>70</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

<sup>71</sup> See Prelim Surrogate Value Memo at Attachment 9.

<sup>72</sup> See Letter from the Department entitled “Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: New Shipper Review Double Remedies Supplemental Questionnaire,” dated January 23, 2013.

Conclusion

We recommend applying the above methodology for these preliminary results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
(Date)