



C-542-801

Investigation

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**DATE:** June 13, 2016

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Decision Memorandum for the Affirmative Preliminary  
Determination in the Countervailing Duty Investigation of Certain  
New Pneumatic Off-The-Road Tires from Sri Lanka

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## I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain new pneumatic off-the-road tires (off road tires) in Sri Lanka and that critical circumstances exist, as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

## II. BACKGROUND

### A. Case History

On January 8, 2016, the Department received a countervailing duty (CVD) petition concerning imports of off road tires from Sri Lanka, filed 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> We described the supplements to the petition and our consultations with the Government of Sri Lanka (GOSL) in the Initiation Checklist.<sup>2</sup> On February 10, 2016, we published the initiation of a CVD investigation on off road tires from Sri Lanka.<sup>3</sup>

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<sup>1</sup> See Letter from Petitioners, regarding “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,” dated January 8, 2016 (Petition).

<sup>2</sup> See “Countervailing Duty Initiation Checklist: Certain New Pneumatic Off-The-Road Tires from Sri Lanka,” (February 3, 2016) (Initiation Checklist).

<sup>3</sup> See *Certain New Pneumatic Off-the-Road Tires From India, the People’s Republic of China, and Sri Lanka: Initiation of Countervailing Duty Investigations*, 81 FR 7067 (February 10, 2016) (*Initiation Notice*).



We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.<sup>4</sup> On February 5, 2016, we released the CBP entry data under administrative protective order (APO), and requested comments regarding the data and respondent selection. On February 12, 2016, Petitioners submitted comments regarding respondent selection. On this same date, Petitioners also requested that the Department postpone the deadline for the preliminary determination.

On February 23, 2016, ATC Tires Private Ltd. and Alliance Tire Americas, Inc. (collectively, Alliance), an interested party in the companion antidumping duty (AD) and CVD investigations on off road tires from India, submitted comments regarding the scope of these investigations.

On February 25, 2016, pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2), we selected Camso Loadstar (Private), Ltd. (Camso Loadstar) and Loadstar Private Limited (Loadstar) as mandatory respondents.<sup>5</sup> On this same date, we also: 1) issued the CVD questionnaire to the GOSL; and 2) fully postponed the date of the preliminary determination to June 13, 2016.<sup>6</sup>

On March 4, 2016, Petitioners submitted rebuttal scope comments in response to Alliance.

On March 17, 2016, we received a timely response to the “affiliated companies” section of the CVD questionnaire from Camso Loadstar.<sup>7</sup> On April 1, 2016, Camso Loadstar notified the Department that Camso Loadstar and Loadstar are not separate companies; rather, Loadstar is the previous name for Camso Loadstar. Specifically, Camso Loadstar stated that on June 24, 2015, Loadstar changed its name to Camso Loadstar.<sup>8</sup>

On April 14 and April 21, 2016, the GOSL and Camso Loadstar both submitted timely responses to the initial CVD questionnaire in two parts.<sup>9,10</sup>

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<sup>4</sup> See *Initiation Notice* at 7071.

<sup>5</sup> See Memorandum from Whitley Herndon, International Trade Compliance Analyst, to Gary Taverman, Associate Deputy Assistant Secretary, entitled, “Respondent Selection for the Countervailing Duty Investigation of Certain New Pneumatic Off-The-Road Tires from Sri Lanka,” dated February 25, 2016 (Respondent Selection Memo). As explained in that memorandum, when faced with a large number of producers/exporters, the Department may determine that it is not practicable to examine all companies. In these circumstances, section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.

<sup>6</sup> See *Certain New Pneumatic Off-The-Road Tires From India, the People’s Republic of China, and Sri Lanka: Postponement of Preliminary Determinations of Countervailing Duty Investigations*, 81 FR 9426 (February 25, 2016).

<sup>7</sup> See Letter from Camso Loadstar, regarding “Certain Off-the-Road Tires from Sri Lanka; Affiliated Companies Response,” dated March 17, 2016 (Camso Loadstar Affiliation Response).

<sup>8</sup> See Letter from Camso Loadstar, regarding “Certain Off-the-Road Tires from Sri Lanka,” dated April 1, 2016 (Letter Regarding Name Change).

<sup>9</sup> See Letter from the GOSL, regarding “GOSL’s CVD Questionnaire Response; Certain New Pneumatic Off-The-Road Tires from Sri Lanka,” dated April 14, 2016 (GOSL April 14 Response); see also Letter from the GOSL,

On April 29, 2016, we issued a supplemental questionnaire to the GOSL. On May 3, 2016, we issued a supplemental questionnaire to Camso Loadstar regarding its “affiliated companies” response. On May 4, 2016, Petitioners timely filed new subsidy allegations,<sup>11</sup> and on May 6, 2016, we issued additional supplemental questionnaires to Camso Loadstar and the GOSL.

On May 9, 2016, Camso Loadstar submitted a timely response to its first supplemental questionnaire.<sup>12</sup> On May 11, 2016, Petitioners filed a request that the Department align the final determination of this CVD investigation with the companion AD investigation of off road tires from India.

On May 19, 2016, the Department initiated an investigation of the new subsidy allegations submitted by Petitioners,<sup>13</sup> and on this same date, issued questionnaires to Camso Loadstar and the GOSL related to the new subsidy allegations.

On May 20, 2016, Camso Loadstar and the GOSL submitted timely responses to the April 29 and May 6 supplemental questionnaires.<sup>14</sup> On May 24, 2016, Petitioners timely filed a critical circumstances allegation alleging that critical circumstances exist with respect to imports of off road tires from Sri Lanka.<sup>15</sup> On this same date, we issued a letter to Camso Loadstar requesting its monthly shipment data for the period June 2011 through May 2016.

On May 25, 2016, the GOSL submitted a timely response to certain supplemental questions for which it had requested additional time to respond.<sup>16</sup> On June 3, 2016, Camso Loadstar provided its requested monthly shipment data.<sup>17</sup>

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regarding “GOSL’s CVD Questionnaire Response; Certain New Pneumatic Off-The-Road Tires from Sri Lanka,” dated April 21, 2016 (GOSL April 21 Response).

<sup>10</sup> See Letter from Camso Loadstar, regarding “Certain Off-the-Road Tires from Sri Lanka; Section III Response,” dated April 14, 2016 (Camso Loadstar April 14 Response); see also Letter from Camso Loadstar, regarding “Certain Off-the-Road Tires from Sri Lanka; Section III Program-Specific Response, Per April 12, 2016 Memo,” dated April 21, 2016 (Camso Loadstar April 21 Response).

<sup>11</sup> See Letter from Petitioners, regarding “Certain Off-the-Road Tires from Sri Lanka – Petitioners’ New Subsidy Allegations,” dated May 4, 2016.

<sup>12</sup> See Letter from Camso Loadstar, regarding “Certain Off-the-Road Tires from Sri Lanka; Affiliates Supplemental Response,” dated May 9, 2016 (Camso Loadstar Affiliates Supplemental Response).

<sup>13</sup> See Memorandum from Whitley Herndon, International Trade Compliance Analyst, to Melissa Skinner, Office Director, entitled “Certain New Pneumatic Off-The-Road Tires from Sri Lanka: Decision Memorandum on New Subsidy Allegations,” dated May 19, 2016.

<sup>14</sup> See Letter from the GOSL, regarding “GOSL’s CVD Supplemental and Second Supplemental Questionnaire Response; Certain New Pneumatic Off-The-Road Tires from Sri Lanka,” dated May 20, 2016 (GOSL May 20 Response); see also Letter from Camso Loadstar, regarding “Certain Off-the-Road Tires from Sri Lanka; Supplemental Response” (Camso Loadstar May 20 Response).

<sup>15</sup> See Letter from Petitioners, regarding “Certain New Pneumatic Off-The-Road Tires from Sri Lanka – Petitioners’ Critical Circumstances Allegation,” dated May 24, 2016 (Critical Circumstances Allegation).

<sup>16</sup> See Letter from the GOSL, regarding “GOSL’s CVD Supplemental and Second Supplemental Questionnaire Response; Certain New Pneumatic Off-The-Road Tires from Sri Lanka,” dated May 25, 2016 (GOSL May 25 Response).

On June 6, 2016, Petitioners submitted additional comments on the scope of this investigation. However, we rejected these comments because they contained untimely filed new factual information.

#### B. Period of Investigation

The period of investigation (POI) is January 1, 2015, through December 31, 2015.

### III. SCOPE COMMENTS

As noted in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and we requested that parties file all such comments within 20 calendar days of publication of the *Initiation Notice*.<sup>18</sup>

On February 23, 2016, we received scope comments from Alliance, requesting that the Department clarify the scope to be consistent with the scope of the existing orders on off road tires from the People's Republic of China (PRC).<sup>19</sup> Alliance notes that, in a supplement to the Petition, Petitioners indicated that the scope of this investigation is intended to cover the exact same merchandise covered by the existing orders on off road tires from the PRC.<sup>20</sup> According to Alliance, 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, Alliance 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.*

Alliance 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, this proposed language neither changes the meaning of the scope nor is in conflict with the intent of the Petition. Finally, Alliance 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

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<sup>17</sup> See Letter from Camso Loadstar, regarding "Certain Off-the-Road Tires from Sri Lanka; Data Regarding Critical Circumstances Allegation," dated June 3, 2016 (Critical Circumstances Shipment Data).

<sup>18</sup> See *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*.

<sup>19</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 (Sept. 4, 2008); and *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Countervailing Duty Order*, 73 FR 51627 (Sept. 4, 2008) (*OTR Tires from the PRC Orders*).

<sup>20</sup> See Letter from Petitioners, regarding "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," dated January 14, 2016, at 2.

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.

On March 4, 2016, Petitioners submitted rebuttal scope comments, opposing Alliance's proposed addition to the language of the scope. According to Petitioners, Alliance 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" apply only to tires solely used on 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 Alliance's proposed scope amendment.

We considered the request noted above, as well as Petitioners' responsive comments. While the Department does have the authority to define or clarify the scope of an investigation, the Department must exercise this authority in a manner which reflects the intent of the Petition and 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 Petition.<sup>21</sup> Thus, absent an overarching reason to modify the scope in the Petition, the Department accepts the scope as it is currently written.<sup>22</sup> Consequently, we made no change to the scope with respect to Alliance's request because Petitioners intended that their scope exclusion language cover only certain products and modifying the language of the scope in the manner Alliance requests would not reflect the intent of the Petition.

#### **IV. SCOPE OF THE INVESTIGATION**

The product covered by this investigation is certain new pneumatic off-the-road tires from Sri Lanka. A full description of the products covered by this investigation is provided in Appendix I of the preliminary determination published in the *Federal Register*.

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<sup>21</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 Issues and Decision Memorandum under Scope Issues (after Comment 49).

<sup>22</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 Issues and Decision Memorandum at Comment 12; and *Mitsubishi Heavy Industries, Ltd. v. U.S.*, 986 F. Supp. 1428 (CIT 1997).

## V. CRITICAL CIRCUMSTANCES

On May 24, 2016, Petitioners filed a timely critical circumstances allegation, pursuant to section 703(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of off road tires from Sri Lanka.<sup>23</sup> On May 24, 2016, the Department requested from Camso Loadstar monthly shipment data of subject merchandise to the United States for the period June 2011 through May 2016.<sup>24</sup> On June 3, 2016, Camso Loadstar submitted the requested data.<sup>25</sup>

In its critical circumstances allegation, Petitioners allege that there is a reasonable basis to believe that there are subsidies in this investigation which are inconsistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures (Subsidies Agreement), including export subsidies. Specifically, Petitioners cite allegations including: export development reward scheme; tax concessions for exporters of non-traditional products; incentives for producers and suppliers of exporters; tax exemptions and concessions for export production village companies; incentives for certain undertakings with high investments; nation building tax preferences; ports and airport levy preferences; exemptions/concessions for fiscal levies on capital and intermediate goods; export processing zones; Sri Lanka Export Development Board assistance; and export credit guarantees from the Sri Lanka Export Credit Insurance Corporation, for which the Department initiated an investigation as evidence that this criterion is met.<sup>26</sup> Petitioners also assert that there have been massive imports of off road tires over a relatively short period. Petitioners submitted U.S. Census Bureau import data in support of its allegation,<sup>27</sup> which they maintain demonstrate that imports of subject merchandise in the three months following the filing of the Petition (*i.e.*, January through March 2016) increased by more than 15 percent, as compared to the three month period before the filing of the Petition, which is considered “massive” under 19 CFR 351.206(h)(2).

### Analysis

Section 703(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the Subsidies Agreement; and (B) there have been massive imports of the subject merchandise over a relatively short period. When determining whether an alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the Department limits its findings to those subsidies contingent on export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the Subsidies Agreement).<sup>28</sup> In determining whether imports of the subject merchandise have been “massive,”

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<sup>23</sup> See Critical Circumstances Allegation.

<sup>24</sup> See Letter from Shawn Thompson, Program Manager, Office II, regarding “Countervailing Duty Investigation: Certain New Pneumatic Off-The-Road Tires from Sri Lanka,” dated May 24, 2016.

<sup>25</sup> See Critical Circumstances Shipment Data.

<sup>26</sup> See Critical Circumstances Allegation.

<sup>27</sup> *Id.*, at Exhibit 1.

<sup>28</sup> See, *e.g.*, *Steel Threaded Rod from India: Preliminary Affirmative Determination of Critical Circumstances for*

19 CFR 351.206(h)(1) provides that the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, the Department will not consider imports to be massive unless imports during the “relatively short period” (comparison period) have increased by at least 15 percent compared to imports during an “immediately preceding period of comparable duration” (base period).<sup>29</sup> 19 CFR 351.206(i) defines “relatively short period” as normally being the period beginning on the date the proceeding commences (*i.e.*, the date the petition is filed) and ending at least three months later. Moreover, it is the Department’s practice to base its critical circumstances analysis on all available data.<sup>30</sup> Thus, for consideration of this allegation, we used: 1) a four-month base period (*i.e.*, September through December 2015) and a four-month comparison period (*i.e.*, January through April 2016) for Camso Loadstar; and 2) a three-month base period (*i.e.*, October through December 2015) and a three-month comparison period (*i.e.*, January through March 2016) for “all other” producers/exporters.<sup>31</sup>

### *Camso Loadstar*

As discussed below, under “Analysis of Programs,” the Department preliminarily finds that, during the POI, Camso Loadstar received countervailable benefits under two programs that are contingent upon export performance (*i.e.*, Tax Concessions for Exporters of Non-Traditional Products and Nation Building Tax preferences). Therefore, we preliminarily determine that there is a reasonable basis to believe or suspect that there is a program in this investigation which is inconsistent with the Subsidies Agreement. In determining whether there were massive imports from Camso Loadstar, we analyzed the company’s monthly shipment data for the period September 2015 through April 2016. These data indicate that there was a massive increase, as defined in 19 CFR 351.206(h)(2), in shipments of subject merchandise to the United States by Camso Loadstar during the four-month period immediately following the filing of the Petition on January 8, 2016, when compared with the four-month period preceding the filing of the petition.<sup>32</sup>

Camso Loadstar argues that any massive increase in imports can be accounted for by seasonal trends. Therefore, to analyze any seasonal trends in Camso Loadstar’s imports, we examined Camso Loadstar’s shipment data for the above-defined base and comparison periods in 2015-

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*the Countervailing Duty Investigation*, 79 FR 9162 (February 18, 2014) (*Steel Threaded Rod from India*).

<sup>29</sup> See 19 CFR 351.206(h)(2).

<sup>30</sup> See, *e.g.*, *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From the People’s Republic of China: Preliminary Affirmative Determination, Preliminary Partial Affirmative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 79558 (December 22, 2015), unchanged in *Certain Cold-Rolled Steel Flat Products From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Partial Affirmative Critical Circumstances Determination*, 81 FR 32729 (May 24, 2016).

<sup>31</sup> Camso Loadstar reported its monthly shipment data through April 2016, while we were only able to obtain shipment data from Global Trade Atlas through March 2016. See Memorandum from Whitley Herndon, International Trade Compliance Analyst, to the File, entitled “Antidumping Duty Investigation on Certain New Pneumatic Off-The-Road Tires from Sri Lanka: Preliminary Analysis of Critical Circumstances,” dated concurrently with this memorandum (Critical Circumstances Memorandum).

<sup>32</sup> *Id.*

2016, 2014-2015, and 2013-2014.<sup>33</sup> After analyzing the data for these periods, we conclude that Camso Loadstar's imports of subject merchandise cannot be accounted for by seasonal trends in the industry.<sup>34</sup>

#### *All Other Exporters/Producers*

With regard to whether imports of subject merchandise by the "all other" producers/exporters of off road tires in Sri Lanka were massive, we preliminarily determine that, because there is evidence of the existence of countervailable subsidies that are inconsistent with the Subsidies Agreement, an analysis is warranted as to whether there was a massive increase in shipments by the "all other" companies, in accordance with section 703(e)(1)(B) of the Act and 19 CFR 351.206(h). Therefore, we attempted to analyze, in accordance with 19 CFR 351.206(i), monthly shipment data for the period October 2015 through March 2016, using shipment data from Global Trade Atlas, adjusted to remove shipments reported by Camso Loadstar.<sup>35</sup> However, we find the resulting data unusable for purposes of our massive analysis.<sup>36</sup> Therefore, we based our analysis for "all other" producers/exporters of off road tires in Sri Lanka on Camso Loadstar's data. As a result, we determine that there was a massive increase in shipments from these remaining companies, as defined by 19 CFR 351.206(h).<sup>37</sup> We also find that seasonal trends do not account for the surge in imports from these remaining companies subsequent to the filing of the petition.

As a result, in accordance with section 703(e)(2)(A) of the Act, we preliminarily find that critical circumstances exist for Camso Loadstar and "all other" producers/exporters of off road tires in Sri Lanka.

## **VI. INJURY TEST**

Because Sri Lanka is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of

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<sup>33</sup> See Critical Circumstances Memorandum, at Attachment I.

<sup>34</sup> For the Department's analysis, which involves business proprietary information, see Critical Circumstances Memorandum.

<sup>35</sup> See, e.g., *Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances*, 77 FR 73430, 73432 (December 10, 2012), unchanged in *Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 75973, 75974 (December 26, 2012); see also *Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210, 47212 (September 15, 2009), unchanged in *Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination: Final Negative Critical Circumstances Determination*, 74 FR 64045, 64047 (December 7, 2009).

<sup>36</sup> Because the Department's analysis that the GTA data are unusable for purposes of determining whether the "all others" companies had massive imports over a relatively short period involves business proprietary information, see the Critical Circumstances Memorandum for our analysis; see also Critical Circumstances Memorandum, at Attachment I.

<sup>37</sup> *Id.*

the subject merchandise from Sri Lanka materially injure, or threaten material injury to, a U.S. industry. On March 1, 2016, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of off road tires from Sri Lanka.<sup>38</sup>

## VII. SUBSIDIES VALUATION

### A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.<sup>39</sup> The Department finds the AUL in this proceeding to be 14 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's Depreciation Range System, as revised.<sup>40</sup> The Department notified the respondents of the 14-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding has disputed this allocation period.

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

### B. Attribution of Subsidies

Camso Loadstar responded to the Department's questionnaire both on its own behalf and on behalf of Loadstar, the name under which it did business prior to June 24, 2015.<sup>41</sup> Camso Loadstar also provided documentation with respect to its name change, including information that there was no change in ownership.<sup>42</sup> Thus, we find it appropriate to treat Camso Loadstar and Loadstar as the same entity.

Cross Ownership: In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is

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<sup>38</sup> See *Certain New Pneumatic Off-the-Road Tires from China, India, and Sri Lanka: Inv. No. 701-TA-551-553 and 731-TA-1307-1308 (Preliminary)*, 81 FR 10663 (March 1, 2016).

<sup>39</sup> See 19 CFR 351.524(b).

<sup>40</sup> See U.S. Internal Revenue Service Publication 946 (2015), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

<sup>41</sup> See Letter from Camso Loadstar, regarding "Certain Off-the-Road Tires from Sri Lanka," dated April 1, 2016 (Letter Regarding Name Change).

<sup>42</sup> See Camso Loadstar April 14 Response, at Exhibit General 8.

primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.<sup>43</sup>

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>44</sup>

Camso Loadstar reported that it is the producer of subject merchandise. Thus, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Camso Loadstar to its own sales.<sup>45</sup> Camso Loadstar also stated that it: 1) owned a rubber plantation in "minor portion" during the POI; and 2) used a negligible volume of rubber from this plantation in its production process.<sup>46</sup> We intend to request further information from Camso Loadstar regarding its ownership of this rubber plantation, and the plantation's use of any subsidy programs under investigation, after the preliminary determination.

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<sup>43</sup> See *Countervailing Duties; Final Rule* 63 FR 65347, 65401 (November 25, 1998).

<sup>44</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>45</sup> In its affiliation questionnaire response, Camso Loadstar identified Camso Inc. and Camso Ltd. as parent companies that are located outside of Sri Lanka, and Camso GIT (Private) Limited (Camso GIT) as a cross-owned information technology service provider. Camso Loadstar stated that Camso GIT did not receive any subsidy which it transferred to Camso Loadstar. See Camso Loadstar Affiliation Response, at pages III-2 to III-9. As a result, we did not include these affiliates in our subsidy analysis.

<sup>46</sup> See Camso Loadstar Affiliates Supplemental Response, at page 2.

### C. Denominators

In accordance with 19 CFR 351.525(b), when selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondent's receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.<sup>47</sup>

## VIII. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following.

### A. Programs Preliminarily Determined To Be Countervailable

#### 1. Tax Concessions for Exporters of Non-Traditional Products

According to GOSL, under Section 51 of the Inland Revenue Act, No. 10 of 2006 (Inland Revenue Act), as amended, the applicable income tax rate for a company that is engaged in a specified undertaking on or after November 10, 1993, for any year of assessment commencing prior to April 1, 2014, is provided in the fifth schedule of the Inland Revenue Act.<sup>48</sup> In accordance with Section 60(c) of the Inland Revenue Act, a "specified undertaking" is defined as "the export of non-traditional goods, manufactured, produced or purchased by such undertaking."<sup>49</sup> Further, Section 60 of the Inland Revenue Act defines "non-traditional goods" as goods other than black tea in bulk, crepe rubber, sheet rubber, scrap rubber, latex, fresh coconuts, or any other products referred to in Section 16 of the Inland Revenue Act which discussed agricultural undertakings.<sup>50</sup> Thus, the export of off road tires qualifies under this program, and Camso Loadstar reported that it used this program.<sup>51</sup> During the POI Camso

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<sup>47</sup> See also Memorandum to the File from Whitley Herndon, International Trade Compliance Analyst, entitled, "Certain New Pneumatic Off-The-Road Tires from Sri Lanka: Preliminary Determination, Calculation Memorandum for Camso Loadstar," dated June 13, 2016.

<sup>48</sup> See GOSL April 21 Response, at page 7. According to the GOSL, section 51 of the Inland Revenue Act was amended by Inland Revenue (Amendment) Act No. 8 of 2014 to apply to all assessment years. *Id.*, at page 8.

<sup>49</sup> According to the GOSL, Section 60(c) of the Inland Revenue Act also provides that a "specified undertaking" may also be defined as "the performance of any service of ship repair, ship breaking repair and refurbishment of marine cargo containers, provision of computer software, computer programmes, computer systems or recording computer data, or such other services as may be specified by the Minister by Notice published in the Gazette, for payment in foreign currency." *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> See Camso Loadstar April 21 Response, at Exhibits Appendix-1 and Appendix-2; see also Camso Loadstar April 14 Response, at Exhibit General-6.

Loadstar's income tax rate under this program, as per the fifth schedule, was 12 percent.<sup>52</sup> The standard corporate income tax rate for Sri Lanka during the POI was 28 percent.<sup>53</sup>

We preliminarily determine that this program provides a financial contribution in the form of revenue foregone, as defined in section 771(5)(D)(ii) of the Act. We further preliminarily determine that the tax rate under the program confers a benefit with the meaning of 19 CFR 351.509(a)(1) in that Camso Loadstar paid a lower tax rate than it would have paid in the absence of the program. We also preliminarily determine that this program is specific under sections 771(5A)(A) and (B) of the Act because it is limited to companies who export non-traditional goods, among other conditions, and Camso Loadstar received a benefit under this program because of its status as an exporter.<sup>54</sup>

Under 19 CFR 351.509(a), the benefit conferred is the difference between the income tax actually paid and the income tax that would have been paid absent the program. To calculate the benefit of the reduced tax rate that Camso Loadstar received under the program, we determined the income tax that Camso Loadstar actually paid under the program during the POI and the income tax Camso Loadstar would have paid under the standard corporate income tax rate. To calculate the subsidy rate, we divided the benefit by Camso Loadstar's export sales during the POI. On this basis, we preliminarily determine the countervailable subsidy rate for Camso Loadstar under this program to be 0.80 percent *ad valorem*.

## 2. Nation Building Tax (NBT) Preferences

According to GOSL, the NBT, imposed by the NBT Act No. 9 of 2009, is a liable turnover (indirect) tax on every person or partnership that imports, manufactures, sells (wholesale or retail), or provides services.<sup>55</sup> Camso Loadstar is exempted from taxation under this act because "any article exported by the manufacturer" and "articles not being plant, machinery or fixtures imported by any person exclusively for use in, or for, the manufacture of any article for export" are exempted from the NBT.<sup>56</sup> The tax rate under this program during the POI is two percent.<sup>57</sup>

Camso Loadstar reported that it received a benefit under this program in the form of revenue forgone.<sup>58</sup>

We preliminarily determine that this program provides a financial contribution in the form of revenue foregone, as defined in section 771(5)(D)(ii) of the Act. We further preliminarily

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<sup>52</sup> See Camso Loadstar April 21 Response, at page 1.

<sup>53</sup> See GOSL May 20 Response, at page 3.

<sup>54</sup> See Camso Loadstar April 21 Response, at Exhibit Appendix-1.

<sup>55</sup> See GOSL April 14 Response, at Attachment 6; see also GOSL May 20 response, at Attachment S-1.

<sup>56</sup> See GOSL April 14 Response, at Attachment 6.

<sup>57</sup> See Camso Loadstar April 21 Response, at pages 3-12; see also Camso Loadstar May 20 Response, at pages 12-13; and GOSL April 14 Response, at pages 9-10.

<sup>58</sup> See Camso Loadstar April 21 Response, at Exhibits Appendix-1 and Appendix-2; see also Camso Loadstar April 14 Response, at Exhibit General-6.

determine that the tax exemption which Camso Loadstar received under the program is confers a benefit within the meaning of 19 CFR 351.517(a) in that Camso Loadstar was exempt from the NBT. We also preliminarily determine that this program is specific pursuant to sections 771(5A)(A) and (B) of the Act because Camso Loadstar received a benefit contingent upon export performance.

Under 19 CFR 351.517(a), the benefit is the difference in the amount of NBT exempted based upon Camso Loadstar's export status and the amount that would have been levied on goods sold for domestic consumption during the POI absent the program. To calculate the subsidy rate, we divided the benefit by Camso Loadstar's export sales during the POI. On this basis, we preliminarily determine the countervailable subsidy rate for Camso Loadstar under this program to be 2.10 percent *ad valorem*.

## B. Programs Preliminarily Determined Not to Confer a Benefit During the POI

### 1. Exemptions/Concessions for Fiscal Levies on Capital and Intermediate Goods

According to GOSL, the Exemptions/Concessions for Fiscal Levies on Capital and Intermediate Goods program provides for a reduction of or exemption from customs duties on imports of capital goods and intermediate goods used in the production of exported products.<sup>59</sup>

The GOSL states that all capital goods exported from most favored nation (MFN) countries are subject to a zero percent import duty.<sup>60</sup> Because Camso Loadstar reported that all the capital goods it imported were from MFN countries with a zero percent import duty, we preliminarily determine that Camso Loadstar received no benefit from this portion of the program because it would have paid no import duties on these capital goods even in the absence of this program.<sup>61</sup>

## C. Programs Preliminarily Found Not To Be Used

1. Export Development Reward Scheme
2. Tax Concessions for Specified Undertakings
3. Incentives for Producers and Suppliers of Exporters
4. Tax Exemptions and Concessions for Export Production Village Companies
5. Incentives for New Undertakings

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<sup>59</sup> See GOSL April 21 Response, at pages 33-41; see also Camso Loadstar April 21 Response, at pages 13-14 and Appendix 6.

<sup>60</sup> See GOSL May 25 Response, at Attachment S-3; See also Camso Loadstar April 21 Response, at Appendix 6.

<sup>61</sup> Regarding "intermediate goods," the GOSL defined this term as "all input materials that were used in the process to produce the final product." See GOSL May 20 Response at page 5. However, we initiated this program only on eligible capital and intermediate goods, which "include machinery, equipment, accessories, appliances, devices, and supporting equipment; other essential equipment; spare parts of project plants; and transportation and handling equipment." Further, we declined to initiate an investigation of certain programs related to inputs (*i.e.*, Port and Airport Levy Preferences; and Duty Rebate Scheme) because we found that Petitioners failed to properly support an allegation that these inputs are not consumed in the production of an exported product, as required under 19 CFR 351.519. See Initiation Checklist, at pages 14, 15, and 20. Therefore, we did not examine this program as it relates to inputs that may be classified as intermediate goods by the GOSL.

6. Incentives for Certain New Undertakings in Certain Areas
7. Incentives for New Undertakings in Any Lagging Region
8. Incentives for Certain Undertakings with High Investments
9. Port and Airport Levy Preferences
10. Tax Incentives from the Board of Investment of Sri Lanka
11. Export Processing Zones
12. Sri Lanka Export Development Board Assistance
13. Export Credit Guarantees from the Sri Lanka Export Credit Insurance Corporation

D. Programs For Which Additional Information Is Needed

On May 19, 2016, we initiated an investigation of three new subsidy allegations filed by Petitioners. Camso Loadstar's and the GOSL's responses to this questionnaire are currently due on June 17, 2016. Further, as noted in the "Cross Ownership" section, above, we intend to request further information from Camso Loadstar regarding its ownership of a rubber plantation and the plantation's use of any subsidy programs under investigation. Therefore, we intend to include our analysis of these programs in a post-preliminary determination.

**IX. ITC NOTIFICATION**

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information pertaining to this case, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

**X. VERIFICATION**

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

**XI. CONCLUSION**

We recommend that you approve the preliminary findings described above.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

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

13 JUNE 2016  
\_\_\_\_\_  
(Date)