



A-570-912

AR: 9/1/10 - 8/31/11

Public Document

IA AD/CVD O8: AMM

October 1, 2012

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 2010-2011
Antidumping Duty Administrative Review: Certain New
Pneumatic Off-the-Road Tires from the People's Republic of China

SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative 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, 2010, through August 31, 2011. The Department has preliminarily determined that Hangzhou Zhongce Rubber Co., Ltd. ("Zhongce") did 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

On September 2, 2011, the Department published a notice of opportunity to request an administrative review of the antidumping order on OTR tires from the PRC for the POR September 1, 2010, through August 31, 2011.¹ On September 27, 2011, the Department received a request for review, on itself, from Guizhou Tyre Co., Ltd., Guizhou Advance Rubber Co., Ltd.,

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 76 FR 54735 (September 2, 2011).



and Guizhou Tyre Import and Export Corporation (collectively, “GTC”).² On September 30, 2011, the Department received a request for review, on itself, from Tianjin United Tire & Rubber International Co., Ltd. (“TUTRIC”). On September 30, 2011, the Department also received a timely request for review of 85 companies from Bridgestone Americas, Inc. and Bridgestone Americas Tire Operations, LLC (collectively, “Bridgestone”), a domestic interested party in this review. On September 30, 2011, Zhongce also filed a request for self-review.³ On October 31, 2011, the Department of Commerce initiated an administrative review of the antidumping duty order on OTR tires from the PRC.⁴

On December 8, 2011, the Department determined, pursuant to section 777(c)(2) of the Act, that it was not practicable to fully investigate each of the 85 exporters for whom the Department initiated an administrative review and, in accordance with section 777(c)(2)(B) of the Act selected as mandatory respondents the two largest companies for which reviews were requested.⁵ The largest two exporters of the merchandise that were selected as mandatory respondents were GTC and Xuzhou Xugong Tyre Co. Ltd. (“Xugong”).

On January 6, 2012, Bridgestone withdrew its request for review of all 85 companies;⁶ on January 11, 2012, GTC withdrew its request for review on itself;⁷ and on January 13, 2012, TUTRIC withdrew its request for a review.⁸

On February 8, 2012, the Department selected Zhongce as the sole mandatory respondent for this review, and noted its intent to rescind the review for all other companies.⁹

² Guizhou Tyre Co., Ltd., Guizhou Advance Rubber Co., Ltd., and Guizhou Tyre Import and Export Corporation were collapsed to be the collective entity, GTC, in the investigation. *See Certain New Pneumatic Off-The-Road Tires From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9283 (February 20, 2008), unchanged in *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008).

³ On February 3, 2012, the Department rejected Zhongce's September 30, 2011 request for review as incorrectly filed, and allowed Zhongce to re-file its request. *See* Letter to Zhongce entitled “2010-2011 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: September 30, 2011 Request for Review,” dated February 3, 2012. On February 7, 2012, Zhongce timely filed a renewed request for review. *See* Letter from Zhongce entitled “New Pneumatic Off-the-Road Tires from the PRC: *Renewed Request for Antidumping Administrative Review*,” dated February 7, 2012.

⁴ *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 76 FR 67133 (October 31, 2011) (“*Initiation Notice*”).

⁵ *See* Memorandum to Wendy Frankel, Director, Office 8, entitled “2010-2011 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Respondent Selection,” dated December 8, 2011 (“*Respondent Selection Memo*”).

⁶ *See* Letter from Bridgestone entitled “New Pneumatic Off-The-Road Tires from the People's Republic of China: Withdrawal of Request for Administrative Review,” dated January 6, 2012.

⁷ *See* Letter from GTC entitled “New Pneumatic Off-The-Road Tires from the People's Republic of China: Withdrawal of Request for Review,” dated January 11, 2012.

⁸ *See* Letter from TUTRIC entitled “New Pneumatic Off-The-Road Tires from the People's Republic of China (Administrative Review 09/01/10-08/31/11): Withdrawal of Request for Review,” dated January 13, 2012.

⁹ *See* Memorandum to The File from Andrew Medley entitled “2010-2011 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Selecting Hangzhou Zhongce Rubber Co., Ltd. (“Zhongce”) as a Mandatory Respondent,” dated February 8, 2012.

On May 17, 2012, we extended the time limit for the preliminary results of review by 120 days pursuant to section 751(a)(3)(A) of the Act to October 1, 2012.¹⁰

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,¹¹ combine harvesters,¹² agricultural high clearance sprayers,¹³ industrial tractors,¹⁴ log-skidders,¹⁵ agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;¹⁶ (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,¹⁷ front end loaders,¹⁸ dozers,¹⁹ lift trucks, straddle carriers,²⁰ graders,²¹ mobile cranes,²² 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

¹⁰ See Memorandum to Christian Marsh entitled “*Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Review*,” dated May 17, 2012.

¹¹ 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.

¹² Combine harvesters are used to harvest crops such as corn or wheat.

¹³ Agricultural sprayers are used to irrigate agricultural fields

¹⁴ 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.

¹⁵ 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.

¹⁶ 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.

¹⁷ 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.

¹⁸ 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.

¹⁹ 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.

²⁰ 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.

²¹ 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.

²² *I.e.*, “on-site” mobile cranes designed for off-highway use.

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-type²³ or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol “DOT” must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

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

Suffix letter designations:

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

²³ 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).

- 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

Nonmarket Economy Country

The Department considers the PRC to be a nonmarket economy (“NME”) country.²⁴ 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.²⁵

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.²⁶ 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 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*,²⁷ as amplified by *Silicon Carbide*.²⁸ However, if the Department

²⁴ 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).

²⁵ 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).

²⁶ See *Initiation Notice*, 76 FR at 67133-34.

²⁷ 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*”).

²⁸ 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*”).

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.²⁹

The Department received a completed response to the Section A portion of the NME antidumping questionnaire from Zhongce (including two supplemental responses), which contained information pertaining to its eligibility for a separate rate.³⁰ Zhongce’s submission does not indicate that Zhongce is wholly foreign-owned or located in an ME.³¹ Therefore, the Department must analyze whether Zhongce can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter’s business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.³²

The evidence provided by Zhongce supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) an absence of restrictive stipulations associated with the individual exporters’ business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.³³

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.³⁴ The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

²⁹ 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).

³⁰ See Zhongce’s response to Section A, entitled “New Pneumatic Off-the-Road Tires from the PRC: Section A Response of Hangzhou Zhongce Rubber Co., Ltd.,” dated March 1, 2012 (“Zhongce Section A”). See also Zhongce’s supplemental responses to Section A, entitled “New Pneumatic Off-the-Road Tires from the PRC: Supplemental Section A Response of Hangzhou Zhongce Rubber Co., Ltd.,” dated April 17, 2012; and “New Pneumatic Off-the-Road Tires from the PRC: Second Supplemental Section A Response of Hangzhou Zhongce Rubber Co., Ltd.,” dated June 28, 2012 (“Zhongce Second Supplemental Section A”).

³¹ See Zhongce Section A at A-2.

³² See *Sparklers*, 56 FR at 20589.

³³ See Zhongce Section A at A-3 to A-5.

³⁴ See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People’s Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

For Zhongce, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) Zhongce sets its own export prices independent of the government authority; (2) Zhongce retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) Zhongce has the authority to negotiate and sign contracts and other agreements; and (4) Zhongce has autonomy from the government regarding the selection of management.³⁵

The evidence placed on the record of this review by Zhongce supports a finding of an absence of *de jure* and *de facto* government control with respect to its exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we are preliminarily granting Zhongce separate-rate status.

Surrogate Country and Surrogate Value Data

On December 12, 2011, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value (“SV”) data.³⁶ The Department received surrogate country and SV comments and data from Titan Tire Corporation (“Petitioners”) and Zhongce.³⁷

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

³⁵ See Zhongce Section A at A-6 to A-10.

³⁶ See the Department’s Letter to All Interested Parties, entitled “2010-2011 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Request for Comments on the Selection of a Surrogate Country and Surrogate Values,” dated December 12, 2011 (“Surrogate Country Memo”).

³⁷ See Letter to the Department from Petitioners, entitled “New Pneumatic Off-The Road Tires from the People's Republic of China (Administrative Review, POR-3): Petitioner's Comments re Surrogate Country Selection,” dated January 26, 2012; Letter to the Department from Petitioners, entitled “New Pneumatic Off-The Road Tires from the People's Republic of China (Administrative Review, POR-3): Petitioner's Surrogate Value Submission,” dated February 2, 2012 (“Petitioner February Surrogate Value Submission”); Letter to the Department from Zhongce, entitled “New Pneumatic Off-the-Road Tires from the PRC: Initial Comments on Surrogate Country Selection of Hangzhou Zhongce Rubber Co., Ltd.,” dated March 2, 2012; Letter to the Department from Petitioners, entitled “New Pneumatic Off-The Road Tires from the People's Republic of China (Administrative Review, POR-3): Petitioner's Response to Zhongce's Surrogate Country Selection,” dated March 9, 2012; Letter to the Department from Zhongce, entitled “New Pneumatic Off-the-Road Tires from the PRC: Rebuttal Comments on Surrogate Country and Surrogate Value Selection by of Hangzhou Zhongce Rubber Co., Ltd.,” dated March 9, 2012; Letter to the Department from Petitioners, entitled “New Pneumatic Off-The Road Tires from the People's Republic of China (Administrative Review, POR-3): Petitioner's Surrogate Value Submission,” dated August 6, 2012; and Letter to the Department from Zhongce, entitled “New Pneumatic Off-the-Road Tires from the PRC: Response of Hangzhou Zhongce Rubber Co., Ltd. to Petitioner Surrogate Value Comments of August 6, 2012,” dated August 13, 2012.

country; and (2) significant producers of comparable merchandise.³⁸ 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.³⁹ The sources of the SVs we have used in this investigation are discussed under the “Normal Value” section below.

Petitioners, in their SV comments, submit 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 recently completed antidumping duty investigation of galvanized steel wire from the PRC,⁴⁰ Petitioners note that Thailand provides readily available data for the primary inputs used to produce subject merchandise. Moreover, Petitioners also assert that Thailand is a net exporter of identical merchandise (*i.e.*, OTR tires at the 6-digit HTS level), while the Philippines is a net importer of identical merchandise.

In its SV comments Zhongce proposes that the Department select the Philippines as the primary surrogate country, because the Philippines is a significant producer of comparable merchandise (*i.e.*, new pneumatic tires, HTS 4011) and because there is reliable data from the Philippines available to value factors of production. Zhongce also notes that the Department has used the Philippines as the primary surrogate country in recent cases.⁴¹ Additionally, Zhongce contends that Thailand would not make a good candidate for surrogate country because Thailand is a large producer of natural rubber, which means that Thai rubber import statistics would skew towards expensive specialty rubbers, leading to inflated domestic costs.

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 economic development.⁴² Accordingly, unless we find that all of the countries determined to be equally economically comparable 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, we will rely on data from one of these countries.⁴³ Therefore, we consider all

³⁸ See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“*Policy Bulletin*”).

³⁹ See Surrogate Country Memo.

⁴⁰ See *Galvanized Steel Wire From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 76 FR 68407 (November 4, 2011), unchanged in *Galvanized Steel Wire From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17430 (March 26, 2012).

⁴¹ See, *e.g.*, *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011).

⁴² See Surrogate Country Memo.

⁴³ See, *e.g.*, *Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67708 (November 2, 2011), unchanged in *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).

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."⁴⁴ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.⁴⁵ Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.⁴⁶ "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."⁴⁷ 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.⁴⁸

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.⁴⁹ Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter,"⁵⁰ 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 the seven countries, as a proxy for production data. We obtained export data using the Global Trade Atlas ("GTA") for the following HTS

⁴⁴ See *Policy Bulletin* at 2.

⁴⁵ 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.

⁴⁶ See *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) ("To 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.").

⁴⁷ *Policy Bulletin* at 2.

⁴⁸ *Id.* at 3.

⁴⁹ See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

⁵⁰ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

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.

All countries on the surrogate country list had significant exports of HTS numbers included in the scope of the order; only Thailand had net exports of subject merchandise during the POR.⁵¹ Because none 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.⁵² Both Thailand and the Philippines have good quality data available. Petitioners placed two complete and useable financial statements from Thailand onto the record. Zhongce placed three complete and usable financial statements from the Philippines onto the record.⁵³

In this case, because there is neither data nor surrogate financial statements for Colombia, Indonesia, Peru, South Africa, or Ukraine, these countries will not be considered for primary surrogate country selection purposes at this time. Thus, the Department is left with Thailand or the Philippines as a potential surrogate country. After further examining both the Thai and Filipino financial statements, the Department has determined that the financial statements from Thailand more closely match the subject merchandise and so should more closely match the experience of an OTR tire producer in the PRC. For example, Thai financial statements indicate

⁵¹ See Memorandum to the file through Wendy J. Frankel, entitled "2010-2011 Administrative 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 3 and Attachment XIV.

⁵² See *Policy Bulletin*.

⁵³ A fourth financial statement from Evergreen Rubber Corporation, placed on the record by Zhongce, is unusable because it does not break out cost of goods sold. See Zhongce's submission, entitled "New Pneumatic Off-the-Road Tires from the PRC: Response of Hangzhou Zhongce Rubber Co. to Second Supplemental Sections C and D Questionnaire, Addendum Providing Public Financial Statements," dated August 20, 2012 ("Zhongce Financial Statements Addendum") at Exhibit D.33.

production of tires for cars, airplanes, and garden equipment, which is more comparable to OTR tire production than the Filipino producers who reported production of motorcycle and bicycle tires and tubes.⁵⁴

Additionally, the Department has identified and placed on the record a domestic Thai data source to value natural rubber: daily prices as reported by the Rubber Research Institute of Thailand (“RRIT”) and compiled by the Association of Natural Rubber Producing Countries (“ANRPC”). This data source is contemporaneous with the POR, represents a broad-market average, and appears more specific to Zhongce’s rubber inputs than the broader GTA import data.⁵⁵

The Department finds Thailand to be a reliable source for SVs because Thailand 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, including for natural rubber, a key input in the OTR tire production process. Given the above facts, the Department has selected Thailand as the primary surrogate country for this review.⁵⁶ A detailed explanation of the SVs is provided below in the “Normal Value” section of this notice.

Date of Sale

Section 351.401(i) of the Department’s regulations 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 that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁵⁷

After examining the questionnaire responses and the sales documentation placed on the record by Zhongce, we preliminarily find that the invoice date is the most appropriate date of sale for Zhongce because record evidence indicates that the terms of sale were set at the time when the commercial invoice was issued.⁵⁸

Fair Value Comparisons

To determine whether Zhongce’s sales of OTR tires to the United States were made at less than fair value, we compared export price (“EP”) to NV, as described in the “U.S. Price” and “Normal

⁵⁴ See Petitioner February Surrogate Value Submission at Attachments 3 and 4, and Zhongce Financial Statements Addendum at Exhibits D.34, D.35, and D.36.

⁵⁵ See Factor Valuation section, below.

⁵⁶ See Surrogate Country and Value Memo.

⁵⁷ 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).

⁵⁸ See, Zhongce Section A at A-14.

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*.⁵⁹ In particular, the Department compared monthly, weighted-average EPs with monthly, weighted-average NVs, and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

U.S. Price

The Department considers the U.S. prices of sales by Zhongce to be EPs in accordance with section 772(a) of the Act because they were the prices at which the subject merchandise was first sold before the date of importation by the producer/exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States. We calculated EPs based on prices to unaffiliated purchaser(s) in the United States.

In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and brokerage and handling. Where foreign inland freight or foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on SV rates from Thailand. See “Factor Valuation” section below for further discussion of SV rates.⁶⁰

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 Zhongce for materials, energy, and labor.

Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by Zhongce, the Department calculated NV based on the FOPs reported by Zhongce for the POR. The Department used Thai import data and other publicly available Thai sources in order to calculate

⁵⁹ 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*”).

⁶⁰ In determining the most appropriate surrogate values to use in a given case, the Department’s stated practice is to use period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the POR, and data that is publicly available. See, e.g., *Certain Cased Pencils from the People’s Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

SVs for Zhongce's FOPs. To calculate NV, the Department multiplied Zhongce's reported per-unit FOP quantities by publicly available SVs.⁶¹ 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.⁶²

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Thai import SVs, reported on a Cost, Insurance and Freight ("CIF") basis, 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 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 Thai 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.⁶³ Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.⁶⁴ 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.⁶⁵ 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.⁶⁶ Therefore, we have

⁶¹ See Prelim Surrogate Value Memo at 4 and Attachment I.

⁶² 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.

⁶³ 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.

⁶⁴ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

⁶⁵ 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).

⁶⁶ See *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

not used prices from these countries either in calculating the Thai 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.⁶⁷ 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 Economy Inputs*,⁶⁸ 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.⁶⁹ 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 Zhongce demonstrates that certain inputs were sourced from an ME country and paid for in ME currencies.⁷⁰ The Department used its ME purchases methodology (discussed above) to value Zhongce's ME purchases; where appropriate, freight expenses were added to the ME prices of the inputs.

The Department used Thai Import Statistics from GTA to value most raw materials and certain energy inputs that Zhongce used to produce subject merchandise during the POR, except where listed below.

The Department valued natural rubber inputs using the average of daily prices of natural rubber during the POR, as reported by the RRIT and recorded by the ANRPC.⁷¹ This source is (1) publicly available, (2) in the primary surrogate country, and (3) spans the POR. The ANRPC compiles the prices of natural rubber from Kuala Lumpur, Bangkok, Kottayam, and Malaysia on a daily basis. The prices for Thailand are the country-wide "Official Noon Price," on a free on board basis, as reported by the RRIT and Department of Agriculture for natural rubber of grades RSS3 and STR20.

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).

⁶⁷ See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

⁶⁸ 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*").

⁶⁹ *Id.*

⁷⁰ See Zhongce's first supplemental section C and D submission, entitled "New Pneumatic Off-the-Road Tires from the PRC: Supplemental Sections C and D Response of Hangzhou Zhongce Rubber Co., Ltd.," dated May 21, 2012, at CD-15 and Exhibit D.10. See also, Zhongce's second supplemental section C and D submission, entitled "New Pneumatic Off-the-Road Tires from the PRC: Response of Hangzhou Zhongce Rubber Co., to Part Two of Second Supplemental Sections C and D Questionnaire," dated August 2, 2012, at 10 and Exhibit D.32.

⁷¹ See Prelim Surrogate Value Memo at Attachment VII.

The Department valued water using data from Thailand’s Board of Investment.⁷² This source provides water rates for industrial users that are exclusive of value added taxes.

The Department valued electricity using data from the Provincial Electricity Authority’s 2009 Annual Report.⁷³ This source provides average electricity rates in baht per kilowatt-hour.

The Department valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand that is published in *Doing Business 2012: Thailand* by the World Bank.⁷⁴

The Department used Thai transport information in order to value the freight-in cost of the raw materials. To value truck freight, we obtained data from: (1) Consulting and Business Development in Southeast Asia (2005), and (2) distances from Google Maps (<http://maps.google.com>). We calculated the per-kilometer price to transport one kilogram of merchandise from Bangkok to five cities in Thailand. We inflated this value to a POR value.⁷⁵

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.⁷⁶ 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, the Department has calculated the labor input using the wage method described in *Labor Methodologies*. To value the respondent’s labor input, the Department relied on data reported by Thailand to the ILO in Chapter 6A of the Yearbook. Although the Department further finds the two-digit description under ISIC-Revision 3 (“Division: 25 - Manufacture of rubber and plastics products”) to be the best available category, because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise, Thailand has not reported data specific to the two-digit description since 2000. However, Thailand did report total manufacturing wage data in 2005. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using total manufacturing labor data reported by Thailand to the ILO, in accordance with section 773(c)(4) of the Act.⁷⁷ For the preliminary determination, the calculated industry-specific wage

⁷² See Prelim Surrogate Value Memo at Attachment VI.

⁷³ See Prelim Surrogate Value Memo at Attachment V.

⁷⁴ See Prelim Surrogate Value Memo at Attachments XII and XIII.

⁷⁵ See Prelim Surrogate Value Memo at Attachments X and XI.

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

⁷⁷ See *Labor Methodologies*, 76 FR at 36094, n.11; see also *Small Diameter Graphite Electrodes From the People’s Republic of China: Preliminary Results and Partial Rescission of Administrative Review*, 77 FR 13284, 13292-93 (March 6, 2012) (relying upon national data reported by ILO Chapter 6A in the absence of Chapter 6A industry-specific data), unchanged in *Small Diameter Graphite Electrodes from the People’s Republic of China: Final Results of Administrative Review*, 77 FR 40854 (July 11, 2012).

rate is 138.26 baht per hour.⁷⁸ A more detailed description of the wage rate calculation methodology is provided in the Prelim Surrogate Value Memo.

As stated above, the Department used Thailand ILO data reported under Chapter 6A of Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, *etc.* Additionally, where the financial statements used to calculate the surrogate financial ratios include itemized detail of labor costs, the Department made adjustments to certain labor costs in the surrogate financial ratios.⁷⁹

To value factory overhead, selling, general, and administrative expenses, and profit, the Department used the audited financial statements, for the year ending December 31, 2010, of Thai tire producers Goodyear (Thailand) Public Company Limited and Hwa Fong Rubber (Thailand) Public Company Limited.⁸⁰

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 dates of the U.S. sales, as certified by the Federal Reserve Bank.

Conclusion

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

Paul Piquado
Assistant Secretary
for Import Administration

(Date)

⁷⁸ See Prelim Surrogate Value Memo at Attachment VIII.

⁷⁹ See *Labor Methodologies*, 76 FR at 36093-94.

⁸⁰ See Prelim Surrogate Value Memo at Attachment IX.