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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results in the
Antidumping Duty New Shipper Review of Certain New
Pneumatic Off-the-Road Tires from the People's Republic of
China

SUMMARY

The Department of Commerce has analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty new shipper review of certain new pneumatic off-the-road tires from the People's Republic of China. As a result of this analysis, we have made changes to the *Preliminary Results*.¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

¹ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review; 2011-2012*, 78 FR 14267 (March 5, 2013) ("*Preliminary Results*"). Also adopted as part of the *Preliminary Results* was the Memorandum to Paul Piquado entitled "Decision Memorandum for Preliminary Results of Antidumping Duty New Shipper Review Pertaining to Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated February 26, 2013 ("*Preliminary Decision Memorandum*").



LIST OF ABBREVIATIONS AND ACRONYMS USED IN THIS MEMORANDUM:

Acronym/Abbreviation	Full Name
Act or Statute	Tariff Act of 1930, as amended
AD	Antidumping Duty
AFA	Adverse Facts Available
AR	Administrative Review
CFR	Code of Federal Regulations
CIT	U.S. Court of International Trade
Customs	U.S. Customs and Border Protection
CVD	Countervailing Duty
Department	Department of Commerce
GNI	Gross National Income
GTA	Global Trade Atlas® Online
HTS	Harmonized Tariff System
HTSUS	Harmonized Tariff System of the United States
ILO	International Labor Organization
ISE	Indirect Selling Expense
NME	Nonmarket Economy
NSR	New Shipper Review
OTR tires	certain new pneumatic off-the-road tires
Petitioner	Titan Tire Corporation
POR	Period of Review
PRC	People's Republic of China
SV	Surrogate Value
Trelleborg Wheel Systems China	Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.

BACKGROUND

The Department published its *Preliminary Results* on March 5, 2013. On March 14, 2013, the Department issued a supplemental questionnaire, in which we requested further information from Trelleborg Wheel Systems China. On March 22, 2013, Trelleborg Wheel Systems China submitted its response.

On March 14, 2013, Trelleborg Wheel Systems China submitted SV information for the record. Petitioner submitted its SV information on March 25, 2013. On April 4, 2013, Petitioner submitted a case brief, and on April 9, 2013, Trelleborg Wheel Systems China submitted a rebuttal brief.

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,² combine harvesters,³ agricultural high clearance sprayers,⁴ industrial tractors,⁵ log-skidders,⁶ agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;⁷ (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,⁸ front end loaders,⁹ dozers,¹⁰ lift trucks, straddle carriers,¹¹ graders,¹² mobile cranes,¹³ compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks. The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the

² 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.

³ Combine harvesters are used to harvest crops such as corn or wheat.

⁴ Agricultural sprayers are used to irrigate agricultural fields

⁵ 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.

⁶ 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.

⁷ 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.

⁸ 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.

⁹ 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.

¹⁰ 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.

¹¹ 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.

¹² 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.

¹³ *I.e.*, "on-site" mobile cranes designed for off-highway use.

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-type¹⁴ 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 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
- 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

¹⁴ 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).

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 ISSUES

Comment 1: Whether to Rescind the Review for non- *Bona Fide* sale

Petitioner's Arguments

- The Department should rescind the review because Trelleborg Wheel Systems China's single sale is not *bona fide*, as it does not represent Trelleborg Wheel Systems China's likely future behavior in the following ways: i) involvement of its parent company in the transaction; ii) the partial fulfillment of its customer's order by an entity in another NME country; iii) the customer's expectation that the order would be sourced from Europe, not the PRC; and iv) Trelleborg Wheel Systems China's insistence that many of its ISEs do not apply to the subject sale and should be excluded from the ISE calculation.
- Because this NSR only covers one sale and Trelleborg Wheel Systems China will likely not be individually reviewed again, greater scrutiny should be applied to determine what constitutes atypical behavior.

Trelleborg Wheel Systems China's Rebuttal Arguments

- Most of Petitioner's points are unsubstantiated speculation.
- With regard to Trelleborg Wheel Systems China's possible future sales, for those ISEs found to be unrelated to sales of subject merchandise, Trelleborg Wheel Systems China would still assert they should be excluded from its ISE calculation.
- The Department could still apply a separate rate to Trelleborg Wheel Systems China in future proceedings, so it is incorrect to imply that the NSR rate may be indefinite.

Department's Position: In our *Preliminary Results*, the Department found Trelleborg Wheel Systems China's single subject sale to be *bona fide*. In evaluating whether a sale is *bona fide*, the Department considers, *inter alia*, such factors as: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis.¹⁵ Although some *bona fides* issues may share commonalities across various cases, the Department examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.¹⁶ In the instant review, the Department found that the timing, price, and quantity of the single sale were, overall, typical of normal business practices within the OTR tire

¹⁵ See, e.g., *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (Ct. Int'l Trade 2005) (citing *Am. Silicon Techs v. United States*, 110 F. Supp. 2d 992, 995 (Ct. Int'l Trade 2000)).

¹⁶ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1341-42 (Ct. Int'l Trade 2005).

industry and Trelleborg Wheel Systems China's operations.¹⁷ The Department also found no unusual expenses arising from the sale, and found that the sale was made on an arms-length basis.¹⁸ Finally, although the record showed that the unaffiliated U.S. customer's appeared to resell the goods at a profit, the Department was unable to determine if and how much of that profit resulted in a net profit or loss.¹⁹ See the Department's *Bona Fides* Memorandum for further details on the Department's analysis.

Since the *Preliminary Results*, no parties submitted additional information to the record. With regard to Petitioner's primary argument, we agree with Trelleborg Wheel Systems China's position that Petitioner's attempts to predict which aspects of the sale under review may or may not reflect Trelleborg Wheel Systems China's future operations are speculative and not founded on the facts on the record. For example, nothing on the record indicates that the involvement of Trelleborg Wheel Systems China's parent company in the coordination of the transaction is unusual practice for Trelleborg Wheel Systems China or for other OTR tire exporters. Petitioner notes that "it is far from clear that this complex pattern will be typical of future U.S. sales..."²⁰ However, the Department finds that the inverse is also far from clear; it is unclear that a sales pattern involving the parent company will not be typical of future U.S. sales. Similarly, the record does not indicate that it is atypical for a customer's purchase order of OTR tires to be filled by merchandise manufactured in multiple countries, either in the context of Trelleborg Wheel Systems China's operations or in the OTR tire industry writ large. Moreover, as delineated in the Department's *Bona Fides* Memorandum, the facts on record surrounding Trelleborg Wheel Systems China's reviewed sale show no evidence of atypical or aberrational behavior.

The Department recognizes that it is essential that every aspect of the sale under review indicate that the transaction was reflective of normal commercial realities between the exporter, the U.S. importer and the unaffiliated U.S. customer. Based on the totality of circumstances in this review, the Department continues to find Trelleborg Wheel Systems China's single subject sale to be *bona fide*.

Comment 2: Whether to change the surrogate country from Indonesia to Thailand

Petitioner's Arguments

- Thailand is more economically comparable to the PRC than Indonesia, and Thailand is a net exporter of identical merchandise, while Indonesia is a net importer of identical merchandise.
- Thailand reports ILO chapter 6A labor data, which the Department prefers to the chapter 5B labor data that Indonesia reports. If the Department uses chapter 5B labor data, it

¹⁷ See the Department's memorandum entitled "Antidumping Duty New Shipper Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: *Bona Fide* Sales Analysis for Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.," dated February 26, 2013 ("*Bona Fides* Memorandum").

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See Letter from Petitioner entitled "Case Brief of Titan Tire Corporation, Petitioner," dated April 4, 2013 ("Petitioner's Brief"), at 4.

will not be able to modify the financial ratio calculations to account for the under-stated wages reported in chapter 5B.

- Since the *Preliminary Results*, Petitioner has placed on the record data for Thai natural rubber prices which were used in the most recent OTR tires administrative review, and that address the concerns that the Department had regarding the Thai natural rubber prices previously placed on the record.
- Since the *Preliminary Results*, Petitioner has placed on the record the 2012 financial statements for Goodyear Thailand, which show a reported profit for the year and, hence, eliminate the concerns the Department had regarding the Thai financial statements on the record.
- The Department should weigh Indonesia's lack of chapter 6A labor data more heavily than the fact that the financial statements on the record from Indonesia are for producers of identical merchandise because the statute does not identify identical goods as superior to comparable goods, and Thai financial statements for producers of comparable goods are on the record and meet all of the Department's criteria.

Trelleborg Wheel Systems China's Rebuttal Arguments

- Thailand's more approximate *per capita* GNI to the PRC is irrelevant, as explained in the Department's Policy Bulletin 04.1.²¹
- Although Indonesia is a net exporter of comparable merchandise, but not identical merchandise, as Petitioner notes, the statute does not identify identical goods as superior to comparable goods, thus making it irrelevant that Thailand is a net exporter of identical merchandise.
- It is the Department's long-standing policy to prefer financial statements of identical producers over those of comparable producers.
- The Department's concerns regarding Indonesian chapter 5B labor data should not supersede its concerns regarding Thai natural rubber sources and financial statements.
- The Thai natural rubber data that Petitioner placed on the record after the *Preliminary Results* is inferior to the Indonesian GTA natural rubber data the Department used in the *Preliminary Results*.

Department's Position: In accordance with section 773(c) of the Act and 19 CFR 351.408(b), the Department has selected Indonesia as the primary surrogate country for the final results. The Department has selected Indonesia because it: (1) is at a level of economic development comparable to the PRC; (2) is a significant producer of merchandise comparable to the merchandise under consideration; and (3) offers the best available SV data.

Regarding Petitioner's argument addressing the first criterion – that Thailand's more approximate GNI to the PRC's should render Thailand more economically comparable to the PRC than Indonesia – we agree with Trelleborg Wheel Systems China. The Department's long-established policy, as stated in the Department's Policy Bulletin 04.1, is to consider all countries identified as economically comparable by the Department's Office of Policy as equally

²¹ See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("Policy Bulletin 04.1").

so. In other words, the “surrogate countries on the {Office of Policy’s} list are not ranked and should be considered equivalent in terms of economic comparability.”²²

In support of its position, Petitioner cites to the decision of the CIT in *Ad Hoc Shrimp*,²³ in which the court took issue with the Department’s policy of disregarding the differences in GNI among potential surrogate countries. As Trelleborg Wheel Systems China notes, the CIT remanded the issue to the Department for further consideration, after which the Department applied AFA to the respondent.²⁴ As such, the CIT’s remand regarding economic comparability became moot and the decision, particularly absent further Department action on the issue in that case, is not instructive or determinative in this case. Moreover, the relevant GNI values at issue in *Ad Hoc Shrimp* are different than those present in this NSR.²⁵ Consequently, the Department continues to consider the economic development of Indonesia and Thailand equally comparable to the PRC’s.

With regard to the Department’s second criterion, Petitioner avers that Thailand is the preferable surrogate country because it is a net exporter of both comparable and identical merchandise, whereas Indonesia is only a net exporter of comparable merchandise but a net importer of identical merchandise. In the *Preliminary Results*, the Department noted that neither the statute nor the regulations provide guidance regarding what constitutes “significant production” of comparable merchandise.²⁶ The Department further noted that the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,” but it does not preclude reliance on additional or alternative metrics.²⁷ Furthermore, neither the statute, regulations nor legislative history provide guidance on how to prioritize the importance of net exportation/importation against that of exports of comparable/identical merchandise. As noted by the Department in the *Preliminary Results*, although only Thailand had net exports of identical merchandise during the POR, both Indonesia and Thailand had significant exports of HTS numbers included in the scope of the order.²⁸ As such, for the final results, the Department continues to find this criterion inconclusive in determining which potential surrogate country to utilize.

²² See Policy Bulletin 04.1.

²³ See *Ad Hoc Shrimp Trade Action Comm. v. United States*, 882 F. Supp. 2d 1366, 1374-76 (Ct. Int’l Trade November 30, 2012) (“*Ad Hoc Shrimp*”).

²⁴ See the Department’s memorandum entitled “Final Results of Redetermination Pursuant to Court Remand, *Ad Hoc Shrimp Trade Action Committee v. United States*, Ct. No. 11-00335, Slip Op. 12-145 (CIT November 30, 2012) and Slip Op. 13-4 (CIT January 9, 2013),” dated April 1, 2013.

²⁵ See *Ad Hoc Shrimp*, 882 F. Supp. 2d at 1372; the Department’s Letter to All Interested Parties entitled “New Shipper Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Trelleborg Wheel Systems (Xingtai) China, Co. Ltd: Request for Comments on the Selection of a Surrogate Country and Surrogate Values,” dated July 26, 2012, at Attachment 1.

²⁶ See Preliminary Decision Memorandum, at 9.

²⁷ See *id.*

²⁸ See Memorandum to the file through Eugene Degnan entitled “New Shipper Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Results Surrogate Value Memorandum,” dated February 26, 2013 (“Preliminary SV Memorandum”), at 7.

Regarding the Department's third criterion, in the *Preliminary Results*, the Department found Indonesia to have more reliable SV data than Thailand. First, the Thai SV for the major input of natural rubber lacked transparency regarding how it was sourced and calculated, whereas Indonesian natural rubber data on the record is sourced from GTA, a resource the Department often relies upon for sound, transparent data, and is available at the six-digit level under HTS "400122 - Technically Specified Natural Rubber (Tsnr) In Primary Forms Or In Plates, Sheets Or Strip."²⁹ Second, the use of Thailand would have also required that the Department choose between Goodyear Thailand's 2011 financial statements, which showed a loss, or those from another producer of comparable merchandise, which showed a profit. Choosing Indonesia, on the other hand, provided the Department with financial statements for a producer of identical merchandise that reported a profit in 2011.³⁰

In response to the *Preliminary Results*, Petitioner placed the following new SV data on the record for Thailand: (1) Thai natural rubber data that it noted were used in the final results of the third administrative review of OTR tires; and (2) Goodyear Thailand 2012 financial statements that report a profit.³¹ Petitioner argues that the Department should use Thailand as the primary surrogate country for the final results because the new data on the record address the concerns the Department noted in the *Preliminary Results*.³² We disagree. The new Thai natural rubber SV data similarly lacks the transparency regarding collection and calculation of data that the Thai natural rubber data previously on the record lacked.³³ While the Department relied on this natural rubber data for the final results of the third administrative review of OTR tires, the record of that review and the facts of that case are distinguishable from the instant review, as the Department made its analysis in that segment based on a choice between the Philippines and Thailand, not Indonesia and Thailand.³⁴ Moreover, while the new financial statements on the record report a profit, Goodyear Thailand is a producer of comparable merchandise, whereas Indonesia still provides the Department with financial statements from a producer of identical merchandise, PT Gajah Tunggal Tbk ("PT Gajah").³⁵

Petitioner further avers that in choosing Indonesia as the primary surrogate country for the *Preliminary Results*, the Department used inferior ILO chapter 5B labor SV data. In contrast, Petitioner remarks that the utilization of Thailand would enable the Department to use ILO chapter 6A labor data, which Petitioner notes the Department recently established as its preferred labor SV data set. While the Department agrees that it generally prefers ILO chapter 6A labor

²⁹ See Preliminary Decision Memorandum, at 10.

³⁰ See *id.*

³¹ See Petitioner's letter entitled "New Pneumatic Off-The Road Tires from the People's Republic of China (New Shipper Review): Petitioner's 20-Day SV Submission," dated March 25, 2013 ("Petitioner's 20-Day SV Submission"), at Attachments 1 and 2.

³² See Petitioner's Brief, at 13-14.

³³ See Petitioner's 20-Day SV Submission, at Attachment 1.

³⁴ See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2010-2011*, 78 FR 22513 (April 16, 2013) and accompanying Issues and Decision Memorandum at Comment 4.

³⁵ See Letter from Trelleborg Wheel Systems China entitled "New Pneumatic Off-the-Road Tires from the PRC: Provision of Surrogate Values and Comments on Surrogate Country Selection of Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.," dated August 6, 2012, at Exhibit 5.

data over chapter 5B data,³⁶ the most recent chapter 6A labor data available at the manufacturing industry-specific, two-digit level in Thailand is from 2000.³⁷ In order to use more recent chapter 6A labor data for Thailand, the Department would have to rely on country-wide, not industry-specific, data from 2005.³⁸ In contrast, while Indonesia does not report ILO chapter 6A data, chapter 5B data is available at the industry-specific, two-digit level for 2008.³⁹

In comparing labor data for both potential surrogate countries, the Department finds that while Indonesian data are not available from the preferred chapter 6A, it provides data that are preferable over Thailand's in two aspects: contemporaneity and specificity. As the Department noted in the *Preliminary Results*, the Department considers several factors in analyzing SV data, 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, and there is no hierarchy among these criteria.⁴⁰ Furthermore, the Department disagrees with Petitioner's statement that there is "no reasonable way to adjust the financial ratios here to compensate for the understated wages resulting from the use of Chapter 5B data."⁴¹ In fact, the Department notes that PT Gajah's financial statements provide itemized indirect labor expenses, which the Department included in its calculation of the surrogate financial ratios for the *Preliminary Results*, thereby correcting for any understated wages in the chapter 5B data.⁴² Therefore, for the final results, the Department will continue to use Indonesia as its primary surrogate country, adjusting the financial ratio calculations to compensate for any undercounting of indirect wage expenses in the Indonesian labor data.

Comment 3: Whether to revise the indirect selling expense ratio

Petitioner's Arguments

- By excluding all ISEs not related to the sale of subject merchandise, Trelleborg Wheel Systems China is effectively treating the ISEs as direct selling expenses, which is contrary to Department policy.
- Trelleborg Wheel Systems China cannot claim the sale of subject merchandise was *bona fide* and simultaneously exclude ISEs normally considered indirect; either the sale was *bona fide* and incurred typical ISEs or it was non-*bona fide* and did not incur typical ISEs.
- Trelleborg Wheel Systems China did not respond to the Department's request for substantiation of ISEs it claims should be excluded from the ISE ratio.

³⁶ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011).

³⁷ See Department's memorandum entitled "Final Results of the New Shipper Review of the Antidumping Duty Order on Certain New Pneumatic off-The-Road Tires from the People's Republic of China: Surrogate Value Memorandum," dated concurrently with this memorandum ("Final SV Memorandum"), at Attachment 4.

³⁸ See Petitioner's 20-Day SV Submission, at Attachment 1.

³⁹ See Final SV Memorandum, at Attachment 4.

⁴⁰ See Preliminary Decision Memorandum, at 9.

⁴¹ See Petitioner's Brief, at 12.

⁴² See Preliminary SV Memorandum, at Attachment 9.

Trelleborg Wheel Systems China's Rebuttal Arguments

- The Department's mandate is to calculate an accurate dumping margin based on the sales of subject merchandise, regardless of speculation as to which ISEs might be incurred in future sales, and this mandate does not differentiate between ARs and NSRs.
- Trelleborg Wheel Systems China provided substantiation for the ISEs it has requested be excluded from the ISE ratio, which shows the ISEs are not related to sales of subject merchandise.

Department's Position: In our *Preliminary Results*, the Department relied upon the ISE ratio initially calculated by Trelleborg Wheel Systems China, which excluded many ISEs it claims were incurred solely in its sale of non-subject merchandise, and which relied partly on an internal ISE allocation methodology used by the U.S. affiliate of Trelleborg Wheel Systems China, Trelleborg Wheel Systems America, during its normal course of business to allocate other ISEs. The Department stated, however, that it would request further substantiation regarding the excluded ISEs and the allocation methodology.⁴³ On March 14, 2013, the Department issued a post-preliminary results supplemental questionnaire seeking the aforementioned substantiation for certain ISEs that Trelleborg Wheel Systems China claims are unrelated to the sale of subject merchandise, as well as clarification regarding the internal methodology Trelleborg Wheel Systems America uses to allocate general ISEs to the division that sells merchandise under consideration.⁴⁴

On March 22, 2013, Trelleborg Wheel Systems China submitted its response to the Department's post-preliminary results supplemental questionnaire. The response included sufficient substantiation for the majority of the ISEs Trelleborg Wheel Systems China claims should be excluded from the ISE calculation.⁴⁵ However, the additional information Trelleborg Wheel Systems China submitted regarding its internal ISE allocation methodology did not sufficiently clarify how each ISE is allocated between sales divisions at Trelleborg Wheel Systems America. The submitted information regarding the internal ISE allocation methodology also does not clearly demonstrate that all ISEs related to the sale of subject merchandise are incorporated in the final ISE ratio calculation.⁴⁶ For a more detailed business proprietary discussion regarding the Department's analysis of Trelleborg Wheel Systems China's ISEs, *see* the Final Results Analysis Memorandum, dated concurrently with this Issues and Decision Memorandum.⁴⁷

⁴³ *See* Preliminary Decision Memorandum, at 10.

⁴⁴ *See* the Department's letter entitled "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: New Shipper Review Post-Preliminary Results Supplemental Questionnaire," dated March 14, 2013, at 3-4.

⁴⁵ *See* Trelleborg Wheel Systems China's letter entitled "Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.'s Third Sales Supplemental Questionnaire Response for the New Shipper Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated March 22, 2013 ("Third Section C Supplemental"), at 4-5, Exhibits SC3-1 – SC3-9.

⁴⁶ *See id.*

⁴⁷ *See* Memorandum from the Department entitled "New Shipper Review of Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Final Results Margin Calculation for Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. ("TWS China")," dated concurrently with this memorandum ("Final Results Analysis Memorandum").

With regard to the Petitioner's arguments, the Department disagrees. In excluding certain ISEs shown to be unrelated to the sale of subject merchandise, the Department is not treating the ISEs as direct selling expenses, *i.e.*, on a sale-by-sale basis, but is merely distinguishing between ISEs shown to be related to sales of subject merchandise versus non-subject merchandise, which is consistent with Department policy.⁴⁸

Furthermore, the Department does not believe that all *bona fide* sales must incur identical sets of ISEs, or that ISEs cannot be considered typical of normal business practices if they are not incurred by all *bona fide* sales. In other words, we find it reasonable to expect that *bona fide* sales made by the same company to its customers in the United States may incur various combinations of typical ISEs and not necessarily the same set of typical ISEs. For this reason, and as discussed in Comment 1 above, the Department determines the *bona fide* nature of a respondent's sales in the larger context of the totality of the facts of the case.

Finally, the Department requested four times that Trelleborg Wheel Systems China provide a clear explanation and demonstration of how relevant ISEs are allocated and accounted for in Trelleborg Wheel Systems China's ISE calculation. In each response to our requests, the information Trelleborg Wheel Systems China provided was incomplete, and the record remains unclear. Pursuant to 19 CFR 351.401(g)(2), in requesting that specific ISEs be excluded or allocation methodologies be accepted, the burden of demonstrating that such exclusions or methodologies are accurate and non-distortive falls on the respondent. In particular, the regulations state that "any party seeking to report an expense or a price adjustment on an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions."⁴⁹

The Department finds that, after providing numerous opportunities, Trelleborg Wheel Systems China still has not met the burden with regard to certain ISEs and allocation issues. For the final results, the Department has altered Trelleborg Wheel Systems China's initial ISE calculation to exclude only those ISEs for which Trelleborg Wheel Systems China provided sufficient evidence that they are unrelated to the sale of subject merchandise. Further, the Department has not accepted Trelleborg Wheel Systems China's allocations of other ISEs between subject and non-subject merchandise where Trelleborg Wheel Systems China has not supported its claimed allocation methodology. Instead, the Department has used its standard allocation ratio of total ISE value to total sales value of subject merchandise to determine the amount of ISE attributable to the sale of subject merchandise. For an explanation of the Department's ISE calculation, *see* the Final Results Analysis Memorandum, dated concurrently with this Issues and Decision Memorandum.

⁴⁸ *See Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012), and accompanying Issues and Decision Memorandum at Comment 15.

⁴⁹ *See* 19 CFR 351.401(g)(2); *see also Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011), and accompanying Issues and Decision Memorandum at Comment 15.

Comment 4: Whether to continue to deny scrap tire and steel wire offsets

Petitioner's Arguments

- The Department should continue to deny scrap offsets for scrap tire and scrap steel wire because Trelleborg Wheel Systems China has not established the commercial value of either by-product.

Trelleborg Wheel Systems China's Rebuttal Arguments

- The Department should grant Trelleborg Wheel Systems China's scrap offset claims for scrap tire and scrap steel wire; it is unreasonable for the Department to expect that a respondent company maintain sales invoices of scrap that identify specific technical information.

Department's Position: The burden for demonstrating eligibility for a by-product offset rests with the party seeking the offset.⁵⁰ In determining whether to grant by-product offsets for merchandise sold during the POR, the Department analyzes whether the record demonstrates production of the by-product during the POR and establishes commercial value for the by-product sold. In our *Preliminary Results*, the Department did not grant an offset for Trelleborg Wheel Systems China's scrap tire because the scrap sales invoices provided did not specify which tire model was sold as scrap. Similarly, the Department did not grant an offset for Trelleborg Wheel Systems China's scrap steel wire because the scrap sales invoices did not identify the scrap material sold as steel wire. As the sales invoices did not sufficiently specify the type of scrap by-product being sold, the Department found the record insufficient in establishing commercial value for the two scrap materials at issue.⁵¹

Shortly before the *Preliminary Results*, the Department requested additional substantiation for the claimed by-product offsets for consideration in the final results.⁵² However, Trelleborg Wheel Systems China stated that it had no substantiation to provide that would specify the scrap steel wire or the relevant scrap tire model.⁵³ Hence, no requisite additional information has been placed on the record for consideration in the final results. Therefore, the Department continues to find no clear substantiation on the record that either scrap steel wire or scrap tires of the subject model were sold. Contrary to Trelleborg Wheel Systems China's rebuttal argument, the

⁵⁰ See *Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 5; see also *Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74644 (December 17, 2012), and accompanying Issues and Decision Memorandum at Comment 2.

⁵¹ See the Department's memorandum entitled "New Shipper Review of Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. ("TWS China")," dated February 26, 2013 ("Preliminary Results Analysis Memorandum"), at 6.

⁵² See Department's letter entitled "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: New Shipper Review Second Supplemental Section D Questionnaire," dated February 1, 2013, at 3.

⁵³ See Trelleborg Wheel Systems China's letter entitled "Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.'s Second Supplemental Section D Questionnaire Response for the New Shipper Review of New Pneumatic Off-the-Road Tires from the People's Republic of China," dated February 14, 2013, at 3.

Department does not necessarily require specific technical information to grant the by-product offset. The evidentiary burden to demonstrate eligibility for an offset could take different forms depending upon the nature of the product in question. However, the invoices Trelleborg Wheel Systems China submitted as evidence of scrap steel wire sales state that “scrap materials” were sold, with no indication of what types of materials the invoices covered.⁵⁴ Given the large number of raw material inputs used in the production of subject tires, an invoice indicating the sale of “scrap material” is not sufficiently indicative that steel wire by-product, specifically, was sold.⁵⁵ Similarly, Trelleborg Wheel Systems China produces a large number of different tire models, and subject merchandise only constitutes one of those tire models.⁵⁶ So an invoice indicating the sale of “scrap tire” is not sufficiently indicative that the scrap tire sold was a result of the production of subject merchandise. As such, for the final results, the Department continues to find that Trelleborg Wheel Systems China did not meet its burden of demonstrating its eligibility for a by-product adjustment, and we continue to deny Trelleborg Wheel Systems China’s scrap tire and scrap steel wire offsets.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this new shipper review in the *Federal Register*.

Agree ____ Disagree ____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date

⁵⁴ See letter from Trelleborg Wheel Systems China entitled “Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.’s Remainder of Supplemental Section D Questionnaire Response for the New Shipper Review of New Pneumatic Off-the-Road Tires from the People’s Republic of China,” dated December 28, 2012, at Exhibit SD-11.

⁵⁵ See Trelleborg Wheel Systems China’s letter entitled “Trelleborg Wheel Systems Section D Response,” dated July 3, 2012, at Exhibit D-6.

⁵⁶ See *id.*, at Exhibit D-15.