

Initiation of Investigation*The Petition*

On June 18, 2007, the Department of Commerce (the Department) received a petition filed in proper form by Titan Tire Corporation and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union, ALF-CIO-CLC (petitioners). On June 22, 2007 and July 3, 2007, the Department issued requests for additional information and clarification of certain areas of the petition involving general issues concerning the countervailing duty (CVD) allegations. Based on the Department's requests, the petitioners filed additional information concerning the petition on June 27, 2007 and July 5, 2007.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), petitioners allege that manufacturers, producers, or exporters of certain new pneumatic off-the-road tires (OTR tires) in the People's Republic of China (the PRC) received countervailable subsidies within the meaning of section 701 of the Act and that such imports are materially injuring an industry in the United States.

The Department finds that petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and petitioners have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department to initiate (*see, infra*, "Determination of Industry Support for the Petition").

Scope of Investigation

The merchandise covered by this investigation is certain new pneumatic off-the-road tires from the PRC. *See* Attachment to this notice for a complete description of the merchandise covered by this investigation.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties: Countervailing Duties: Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to

DEPARTMENT OF COMMERCE**International Trade Administration**

[C-570-913]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATES: August 7, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Toni Page, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3148 and (202) 482-1398, respectively.

Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 147 Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the People's Republic of China (hereinafter, the GOC) for consultations with respect to the countervailing duty petition. The Department held these consultations in Beijing, China with representatives of the GOC on July 16, 2007. See the Memorandum to The File, entitled, "Consultations with Officials from the Government of the People's Republic of China" (July 16, 2007) (public document on file in the CRU of the Department of Commerce, Room B-099).

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in

order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC., Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that certain OTR tires constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see the *Countervailing Duty Investigation Initiation Checklist: Certain New Pneumatic Off-The-Road Tires from the People's Republic of China (PRC) (OTR Tires CVD Initiation Checklist)*, Industry Support at Attachment II, on file in the Central Records Unit (CRU), Room B-099 of the main Department of Commerce building.

On July 6, 2007, the Department extended the initiation deadline by 20 days to poll the domestic industry in accordance with section 702(c)(4)(D) of the Act, because it was "not clear from the petitions whether the industry support criteria have been met * * *" See *Extension of the Deadline for Determining the Adequacy of the Antidumping Duty and Countervailing Duty Petitions: New Pneumatic Off-the-Road Tires from the People's Republic of China*, 72 FR 38816 (July 16, 2007). On July 16, 2007, we issued polling questionnaires to all known domestic producers of certain OTR tires identified

in the petition and by the Department's research. The questionnaires are on file in the CRU. For a detailed discussion of the responses received, see *OTR Tires CVD Initiation Checklist* at Attachment II.

Based on an analysis of the data collected, we determine that the petitioners have demonstrated industry support representing over 50 percent of the total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 702(c)(4)(A)(i) of the Act are met. Furthermore, given that the petitioners represent more than 50 percent of the total production of the domestic like product, the requirements of section 702(c)(4)(A)(ii) of the Act are also met. Accordingly, we determine that this petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. See *OTR Tires CVD Initiation Checklist* at Attachment II.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department initiate. See *OTR Tires CVD Initiation Checklist* at Attachment II.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured by reason of the imports of the subject merchandise sold at less than NV. Petitioners contend that the industry's injured condition is illustrated by the reduced market share, lost sales, reduced production and capacity utilization rate, reduced shipments, underselling and price depressing and suppressing effects, lost revenue and sales, reduced employment, decline in financial performance, decrease in capital expenditure, and increase in import penetration. We have assessed

the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See *OTR Tires CVD Initiation Checklist* at Attachment III.

Subsidy Allegations

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to petitioners supporting the allegations. The Department has examined the countervailing duty petition on OTR tires from the PRC and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of OTR tires in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, see *OTR Tires CVD Initiation Checklist*.

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise:

GOC Loan Programs

1. Discounted Loans for Export-Oriented Enterprises
2. Loan Forgiveness for State Owned Enterprises (SOEs)
3. Preferential Lending to SOEs

GOC Currency Program

4. Foreign Currency Retention Scheme

GOC Grant Programs

5. Grants to the Tire Industry for Electricity
6. The State Key Technologies Renovation Project Fund

GOC Provision of Goods or Services for Less Than Adequate Remuneration

7. Provision of Land and Utilities to SOEs for Less than Adequate Remuneration
8. Provision of Land and Utilities to Foreign Invested Enterprises (FIEs) for Less than Adequate Remuneration

GOC Income Tax Programs

9. Preferential Tax Policies for Enterprises with Foreign Investment

(Two Free, Three Half Income Program)

10. Preferential Tax Policies for Export-Oriented FIEs
 11. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises
 12. Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Origin Machinery
 13. Tax Subsidies to FIEs Based in Specially Designated Geographic Areas
- GOC Indirect Tax Programs and Import Tariff Programs
14. Value Added Tax (VAT) Rebate for FIE Purchases of Domestically Produced Equipment
 15. VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
 16. VAT Export Rebates
 17. Exemption from Payment of Staff and Worker Benefit Taxes for Export-Oriented Enterprises

Provincial Grant Programs

18. Funds for Outward Expansion of Industries in Guangdong Province
19. Export Interest Subsidy Funds for Enterprises Located in Guangdong and Zhejiang Provinces

Provincial Provision of Goods and Services for Less Than Adequate Remuneration

20. Provision of Land and Utilities at Less Than Adequate Remuneration to Export-Oriented Enterprises and FIEs by Provincial Governments

Provincial and Local Tax Programs for FIEs

21. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs

For further information explaining why the Department is investigating these programs, see the *OTR Tires CVD Initiation Checklist*.

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

1. Managed Exchange Rate Export Subsidy (Currency Manipulation)

Petitioners allege that the GOC's manipulates its currency to maintain an undervalued RMB. According to petitioners, the undervalued RMB benefits PRC exporters. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available

information. Therefore, we do not plan to investigate the currency manipulation program.

2. Preferential Lending to the Tire Industry

Petitioners allege that state-owned commercial banks must be under directives from the GOC to give preferential loans to the tire industry. Petitioners failed to demonstrate that such loans could be specific to the tire industry.

3. Grants to the Tire Industry for Land-Usage Fees

Petitioners allege that the GOC offers grants to Chinese tire manufacturers to cover land-usage fees. Petitioners did not provide any evidence of grants to cover land usage fees specific to the tire industry.

4. VAT Export Rebate of Prior-Stage, Cumulative Taxes

Petitioners allege that the VAT levied on capital goods in the PRC actually constitutes a prior stage cumulative tax. Paragraph (h) of the Illustrative List of Export Subsidies in Annex I to the WTO Subsidies and Countervailing Measures Agreement applies to prior stage indirect taxes and VAT systems are expressly excluded from consideration under paragraph (h).

5. Lower VAT Rebates for Downstream Products

Petitioners allege that the GOC provides lower rebates for exports of major inputs to tire production than it provides to exports of tires; thus, benefitting tire production by suppressing the market for inputs. Petitioners were unable to demonstrate that the price of inputs (e.g., rubber) had been affected by the alleged lower export rebate.

Application of the Countervailing Duty Law to the PRC

The Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. See e.g., *Tapered Roller Bearings and Parts Thereof, Finished and 10 Unfinished, (TRBs) From the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500-1 (February 14, 2003), unchanged in *TRBs from the People's Republic of China: Final Results of 2001-2002 Administrative Review*, 68

FR 70488, 70488–89 (December 18, 2003).

In the amended preliminary determination in the investigation of coated free sheet paper from the PRC, the Department preliminarily determined that the current nature of the PRC economy does not create obstacles to applying the necessary criteria in the CVD law. *See Coated Free Sheet Paper from the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484, 17486 (April 9, 2007) (*CFS Preliminary Determination*), and Memorandum for David M. Spooner, Assistant Secretary for Import Administration, "Countervailing Duty Investigation of Coated Free Sheet Paper from The People's Republic of China—Whether the Analytic Elements of the *Georgetown Steel* Opinion are Applicable to China's Present-Day Economy," (March 29, 2007), on file in the CRU. Therefore, because the petitioners have provided sufficient allegations and support of their allegations to meet the statutory criteria for initiating a countervailing duty investigation of OTR tires from the PRC, initiation of a CVD investigation is warranted in this case.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the GOC. To the extent practicable, we will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of subsidized OTR tires from the PRC are materially injuring, or threatening material injury to, a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 30, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Attachment—Scope of the Investigation for the Petitions Covering Certain New Pneumatic Off-the-Road Tires From the People's Republic of China

The products covered by the scope are new pneumatic tires designed for off-the-road (OTR) 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,¹ combine harvesters,² agricultural high clearance sprayers,³ industrial tractors,⁴ log-skidders,⁵ agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;⁶ (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,⁷ front end loaders,⁸ dozers,⁹

¹ Agricultural tractors are four-wheeled vehicles usually with large rear tires and small front tires that are used to tow farming equipment.

² Combine harvesters are used to harvest crops such as corn or wheat.

³ Agricultural sprayers are used to irrigate agricultural fields.

⁴ Industrial tractors are four-wheeled vehicles usually with large rear tires and small front tires that are used to tow industrial equipment.

⁵ 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.

⁶ 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.

⁷ 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.

⁸ Front loaders have lift arms in front of the vehicle. It can scrape material from one location to another, carry material in its bucket or load material into a truck or trailer.

⁹ 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.

lift trucks, straddle carriers,¹⁰ graders,¹¹ mobile cranes, 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.¹² 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. The foregoing descriptions 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 petitions range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type 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,

¹⁰ 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.

¹¹ 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 onto which asphalt or other paving material will be laid.

¹² A counterbalanced lift truck is a rigid frame, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, etc.

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 used on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications; and, tires of a kind used for 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).

[FR Doc. 07-3833 Filed 8-6-07; 8:45 am]

BILLING CODE 3510-DS-M