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DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-870]

Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road tires from India: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain new pneumatic off-the-road tires (off road tires) from India. For information on the estimated subsidy rates, see the “Final Determination” section of this notice. The period of investigation is January 1, 2015, through December 31, 2015.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Spencer Toubia or Gene Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0123 or (202) 482-3586, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* on June 20, 2016.¹ A summary of the events that occurred since the Department published the *Preliminary*

¹ *Certain New Pneumatic Off-the-Road Tires from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Determination* 81 FR 39903 (June 20, 2016) (*Preliminary Determination*).

Determination, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.² The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic version are identical in content.

Scope Comments

In accordance with the *Preliminary Determination*, the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.³ In the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*.⁴ No interested party submitted scope comments in case or rebuttal briefs. Therefore, the scope of this investigation remains unchanged for this final determination.⁵

Scope of the Investigation

The products covered by this investigation are certain new pneumatic off-the-road tires from India. For a complete description of the scope of this investigation, see the "Scope of the Investigation," in Appendix I of this notice.

² See Memorandum, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India," (Issues and Decision Memorandum), dated concurrently with this determination and hereby adopted by this notice.

³ See *Preliminary Determination* at 81 FR 39903, and accompanying Preliminary Decision Memorandum at "Scope Comments."

⁴ *Id.*

⁵ The Department has added two additional subheadings from the Harmonized Tariff Schedule of the United States to the list included for convenience and customs purposes since the *Preliminary Determination*. No revisions were made to the written description of the subject merchandise.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

Use of Adverse Facts Available

The Department, in making these findings, relied, in part, on facts available and, because one or more respondent companies failed to cooperate to the best of their ability in responding to the Department's requests for information, we made adverse inferences.⁶ Further, because the Government of India did not cooperate to the best of its ability in this investigation, we also determine that adverse inferences are warranted, pursuant to section 776(b) of the Act. A full discussion of our decision to rely on adverse facts available is presented in the "Use of Facts Otherwise Available and Adverse Inferences" section of the Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to the respondents' subsidy rate calculations set forth in the *Preliminary Determination*. For a discussion of these changes, see the Issues and Decision Memorandum and the Final Analysis Memoranda.⁷

Final Affirmative Determination of Critical Circumstances, in Part

In the *Preliminary Determination*, the Department found that critical circumstances exist with respect to off road tires from India for All Other exporters or producers not individually

⁶ See sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).

⁷ See Issues and Decision Memorandum; see also Memoranda, "Final Determination Analysis for ATC Tires Private Limited," and "Final Determination Analysis for Balkrishna Industries Limited," both dated concurrently with this determination and hereby adopted by this notice.

examined, but did not exist for ATC Tires Private Limited (ATC) and Balkrishna Industries Limited (BKT).⁸ Upon further analysis of the data and comments submitted by interested parties following the *Preliminary Determination*, we are modifying our findings for the *Final Determination*.⁹ Specifically, in accordance with section 705(a)(2) of the Act, we find that critical circumstances exist with respect to imports from ATC, and All Other producers or exporters, but do not exist for BKT.

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we determined a countervailable subsidy rate for each individually investigated exporter/producer of the subject merchandise (*i.e.*, ATC and BKT). Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an “all-others” rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any *de minimis* countervailable subsidy rates and rates determined entirely by adverse facts available, under section 776 of the Act. Accordingly, in this final determination, we have calculated the “all-others” rate by weight-averaging the calculated subsidy rates of the two individually investigated respondents, using the respondents’ publicly-ranged sales data for exports of subject merchandise to the United States.¹⁰

We determine the estimated net countervailable subsidy rates are as follows.

⁸ See *Preliminary Determination*, 81 FR at 39903.

⁹ For a full description of the methodology and results of our analysis, see the Issues and Decision Memorandum.

¹⁰ See Memorandum, “Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Final Determination Margin Calculation for All-Others,” dated concurrently with this memorandum.

Company	Subsidy Rate
ATC Tires Private Limited	4.90 percent <i>ad valorem</i>
Balkrishna Industries Limited	5.36 percent <i>ad valorem</i>
All-Others	5.06 percent <i>ad valorem</i>

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension Liquidation

As a result of our *Preliminary Determination*, and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of merchandise under consideration from India that were entered or withdrawn from warehouse, for consumption, on or after June 20, 2016, which is the publication date in the *Federal Register* of the *Preliminary Determination*. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after October 17, 2016, but to continue the suspension of liquidation of all entries of subject merchandise from March 22, 2016, through October 16, 2016.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury,

or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice serves as the only reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: January 3, 2017

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

Appendix I

Scope of the Investigation

The scope of this investigation is certain new pneumatic off-the-road tires (certain off road tires). Certain off road tires are tires with an off road tire size designation. The tires included in the scope may be either tube-type¹¹ or tubeless, radial, or non-radial, regardless of whether for original equipment manufacturers or the replacement market.

Subject tires may have the following prefix or suffix designation, which appears on the sidewall of the tire:

Prefix designations:

DH – Identifies a tire intended for agricultural and logging service which must be mounted on a DH drop center rim.

VA – Identifies a tire intended for agricultural and logging service which must be mounted on a VA multipiece rim.

IF – Identifies an agricultural tire to operate at 20 percent higher rated load than standard metric tires at the same inflation pressure.

VF – Identifies an agricultural tire to operate at 40 percent higher rated load than standard metric tires at the same inflation pressure.

Suffix designations:

ML – Mining and logging tires used in intermittent highway service.

DT – Tires primarily designed for sand and paver service.

NHS – Not for Highway Service.

TG – Tractor Grader, off-the-road tire for use on rims having bead seats with nominal +0.188" diameter (not for highway service).

K – Compactor tire for use on 5° drop center or semi-drop center rims having bead seats with nominal minus 0.032 diameter.

IND – Drive wheel tractor tire used in industrial service.

SL – Service limited to agricultural usage.

¹¹ 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).

FI – Implement tire for agricultural towed highway service.

CFO – Cyclic Field Operation.

SS – Differentiates tires for off-highway vehicles such as mini and skid-steer loaders from other tires which use similar size designations such as 7.00-15TR and 7.00-15NHS, but may use different rim bead seat configurations.

All tires marked with any of the prefixes or suffixes listed above in their sidewall markings are covered by the scope regardless of their intended use.

In addition, all tires that lack any of the prefixes or suffixes listed above in their sidewall markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the following sections of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set forth below. The sections of the Tire and Rim Association Year Book listing numerical size designations of covered certain off road tires include:

The table of mining and logging tires included in the section on Truck-Bus tires;

The entire section on Off-the-Road tires;

The entire section on Agricultural tires; and

The following tables in the section on Industrial/ATV/Special Trailer tires:

- Industrial, Mining, Counterbalanced Lift Truck (Smooth Floors Only);
- Industrial and Mining (Other than Smooth Floors);
- Construction Equipment;
- Off-the-Road and Counterbalanced Lift Truck (Smooth Floors Only);
- Aerial Lift and Mobile Crane; and
- Utility Vehicle and Lawn and Garden Tractor.

Certain off road tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes certain off road tires produced in the subject countries whether mounted on wheels or rims in a subject country or in a third country. Certain off road tires are covered whether or not they are accompanied by other parts, *e.g.*, a wheel, rim, axle parts, bolts, nuts, etc. Certain off road tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope are passenger vehicle and light truck tires, racing tires, mobile home tires, motorcycle tires, all-terrain vehicle tires, bicycle tires, on-road or on-highway trailer tires, and truck and bus tires. 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 prefixes and suffixes included as part of the size designation on their sidewalls:

Prefix letter designations:

AT – Identifies a tire intended for service on All-Terrain Vehicles;

P – Identifies a tire intended primarily for service on passenger cars;

LT – Identifies a tire intended primarily for service on light trucks;

T – Identifies a tire intended for one-position “temporary use” as a spare only; 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;

ST – Special tires for trailers in highway service; and

M/C – 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; aircraft tires; and turf, lawn and garden, and golf tires. Also excluded from the scope are mining and construction tires 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).

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1025, 4011.20.1035, 4011.20.5030,

4011.20.5050, 4011.61.0000, 4011.62.0000, 4011.63.0000, 4011.69.0050, 4011.92.0000, 4011.93.4000, 4011.93.8000, 4011.94.4000, 4011.94.8000, 8431.49.9038, 8431.49.9090, 8709.90.0020, and 8716.90.1020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.4550, 4011.99.8550, 8424.90.9080, 8431.20.0000, 8431.39.0010, 8431.49.1090, 8431.49.9030, 8432.90.0005, 8432.90.0015, 8432.90.0030, 8432.90.0080, 8433.90.5010, 8503.00.9560, 8708.70.0500, 8708.70.2500, 8708.70.4530, 8716.90.5035, 8716.90.5055, 8716.90.5056 and 8716.90.5059. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Scope Comments
- V. Subsidies Valuation Information
- VI. Benchmarks and Interest Rates
- VII. Use of Facts Otherwise Available and Adverse Inferences
- VIII. Analysis of Programs
- IX. Analysis of Comments

- Comment 1: Whether Tax and Import Duty Exemptions Under the Special Economic Zone (SEZ) and Export-Oriented Unit (EOU) Programs are Countervailable
- Comment 2: Whether the Department Must Eliminate Certain Duties Regarding ATC's Tamil Nadu SEZ Location in the Final Determination
- Comment 3: Whether the Advance Authorization Scheme (AAP) Is a Countervailable Program
- Comment 4: Whether the Department Should Apply Adverse Facts Available (AFA) to Determine if the Government of Gujarat's (GOG) Provision of Land to BKT from the "Land Bank" was Specific
- Comment 5: Whether the Department May Use Land Purchased by BKT from Private Parties as Benchmarks and Whether They Show the GOG, through the "Land Bank" Did Not Provide Land to BKT at LTAR
- Comment 6: Whether ATC Benefited from the Provision of Land for LTAR for its SEZ/EOU Locations and Whether the Provision of Land to ATC is Contingent upon Export Performance
- Comment 7: Whether the Department Should Revise the Benchmark for the Provision of Land Provided to ATC for its SEZ/EOU Locations
- Comment 8: Whether the Department Should Revise the Discount Rate Used to Allocate ATC's Land-Use Rights Benefits for its SEZ/EOU Locations
- Comment 9: Whether the Income Tax Deductions for Research and Development Expenditures Is a Specific Subsidy
- Comment 10: Whether the Department Should Use a Six-Month Comparison Period for Its Final Critical Circumstances Determination
- Comment 11: Whether the Department Should Correct Calculation Errors regarding ATC's Preliminary Determination Calculations
- Comment 12: Whether the Department Should Apply AFA because of Information Obtained at Verification
- Comment 13: Whether the Department Should Subtract BKT's Sales of its Paper Division from its Total Sales and Total Export Sales Denominators
- Comment 14: Whether the Department Should Subtract Sales from BKT's Wind Divisions from its Total Sales and Total Export Sales Denominators

Comment 15: Whether the Department Should Use Total Sales Instead of Export Sales as the Denominator when Calculating the Rate for the Export Promotion of Capital Goods Scheme (EPCGS).

X. Recommendation

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