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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-913]

Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results

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

SUMMARY: On December 26, 2019, the United States Court of International Trade (the Court) issued final judgment in *Guizhou Tyre Co. Ltd.; Guizhou Tyre Import & Export Co., Ltd; & Xuzhou Xugong Tyres Co., Ltd. v. United States*, Consol. Court No. 17-00101, Slip Op. 19-171, sustaining the Department of Commerce's (Commerce) remand results pertaining to the 2014 administrative review of the countervailing duty (CVD) order on certain pneumatic off-the-road tires (OTR Tires) from the People's Republic of China (China). Commerce is notifying the public that the Court has made a final judgment that is not in harmony with the final results of the 2014 administrative review, and that Commerce is amending the final results of the 2014 administrative review with respect to mandatory respondents and non-selected companies.

DATES: Applicable January 6, 2020

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang, 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) 482-5484.

SUPPLEMENTARY INFORMATION:

[Background](#)

On April 18, 2017, Commerce published the *Final Results* pertaining to mandatory respondents Guizhou Tyre Co., Ltd. (Guizhou Tyre) and Xuzhou Xugong Tyres Co. Ltd. (Xuzhou Xugong) in the 2014 administrative review of the CVD order on OTR Tires from China.¹ The period of review is January 1, 2014 through December 31, 2014. In the *Final Results*, Commerce found, based on adverse facts available (AFA), that the mandatory respondents had used the Export Buyer's Credit Program (EBCP).²

On October 25, 2018, the Court remanded the *Final Results* to Commerce to reconsider its decision to apply AFA to the EBCP program.³ Specifically, the Court held that "Commerce had a clear path to find non-use by either accepting the declarations submitted by {p}laintiffs and their U.S. Customers or by verifying these declarations," and ordered Commerce to reconsider the evidence of non-use by Government of China (GOC).⁴

On March 5, 2019, Commerce submitted its remand redetermination, in which it reconsidered its decision to apply AFA to the EBCP and provided extensive additional explanation in support of its treatment of the program.⁵ Guizhou Tyre and Xuzhou Xugong continued to challenge Commerce's determination regarding the use of EBCP. Pursuant to the Court's remand order, Commerce had explained how the GOC's refusal to provide certain information concerning the operation of the program prevented a meaningful and accurate verification of the non-use claims of the respondents and their U.S. customers.⁶

¹ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 18285 (April 18, 2017) (*Final Results*), and the accompanying Issues and Decision Memorandum (IDM).

² See *Final Results* IDM.

³ See *Guizhou Tyre Co., Ltd., et al. v. United States*, CIT Slip Op. 18-140, Consol. Ct. No. 17-00101 (October 17, 2018) (*First Remand Order*) at 25-26.

⁴ See *First Remand Order* at 9 and 25.

⁵ See Results of Redetermination Pursuant to Court Remand (March 5, 2018) (*First Remand Results*) at 5-17 and 24-33.

⁶ See *First Remand Results* at 5-17.

On August 21, 2019, the Court again remanded the determination to Commerce, ordering Commerce to reconsider its application of AFA in light of the record evidence of non-use. The Court held that Commerce did not establish that there was a gap in the record that warranted the application of AFA with respect to the EBCP program.⁷

On November 19, 2019, Commerce filed its second remand redetermination with the Court reconsidering its decision to apply AFA in evaluating use of the EBCP, in which it determined, under respectful protest, that the EBCP program was not used by the respondents based on the certifications submitted by Guizhou Tyre from its customers stating that they did not use program and the record statements by Xuzhou Xugong that none of its customers used the program.⁸ Accordingly, Commerce assigned Guizhou Tyre, Xuzhou Xugong and other non-selected companies net subsidy rates of 19.78 percent, 46.31 percent, and 33.05 percent, respectively.⁹

On December 26, 2019, the Court sustained Commerce's *Second Remand Results* and entered final judgment.¹⁰

Timken Notice

In its decision in *Timken*,¹¹ as clarified by *Diamond Sawblades*,¹² the U.S. Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s December 26, 2019 final judgment sustaining

⁷ See *Guizhou Tyre Co., Ltd., et al. v. United States*, CIT Slip Op. 19-114, Consol. Ct. No. 17-00101 (August 21, 2019) (*Second Remand Order*) at 3-5 and 11.

⁸ See Results of Redetermination Pursuant to Court Remand (November 19, 2019) (*Second Remand Results*) at 8-10.
⁹ *Id.* at 9.

¹⁰ See *Guizhou Tyre Co., Ltd.; Guizhou Tyre Import & Export Co., Ltd.; & Xuzhou Xugong Tyres Co. Ltd. v. United States*, CIT Slip Op. 19-171, Consol. Ct. No. 17-00101 (December 26, 2019).

¹¹ See *Timken Co. v. United States*, 893 F. 2d 337, 341 (Fed. Cir. 1990) (*Timken*).

¹² See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F. 3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Commerce's *Second Remand Results* constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results*.¹³ This notice is published in fulfillment of the *Timken* publication requirements.

Amended Final Results

Because there is now a final court decision, we are amending the *Final Results* with respect to the CVD rates calculated for Guizhou Tyre and Xuzhou Xugong. Based on the *Second Remand Results*, as sustained by the Court, the revised CVD rates for Guizhou Tyre, Xuzhou Xugong, and non-selected companies, from January 1, 2014 through December 31, 2014, are 19.78 percent, 46.31 percent, and 33.05 percent, respectively.

In the event that the Court's ruling is not appealed, or, if appealed, is upheld by a final and conclusive court decision, Commerce will instruct Customs and Border Protection to assess countervailing duties on unliquidated entries of subject merchandise based on the revised subsidy rates summarized above.

Notification to Interested Parties

This notice is issued and published in accordance with section 516A(e)(1), 781(d), and 777(i)(1) of the Act.

Dated: January 7, 2020.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

¹³ See *Final Results*.

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