



BILLING CODE: 3510-DS-P

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 June 5, 2020, the United States Court of International Trade (the Court) sustained the Department of Commerce's (Commerce) remand redetermination pertaining to the 2015 administrative review of the countervailing duty (CVD) order on certain new 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 2015 administrative review, and that Commerce is amending the final results of the 2015 administrative review with respect to Guizhou Tyre Co., Ltd. (Guizhou Tyre) and non-selected companies.

DATES: Applicable June 15, 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 13, 2018, Commerce published its *Final Results* pertaining to mandatory respondents Guizhou Tyre and Xuzhou Xugong Tyres Co., Ltd. (Xuzhou Xugong), along with other exporters.¹ The period of review (POR) is January 1, 2015 through December 31, 2015. In the *Final Results*, Commerce found that the use of adverse facts available (AFA) was warranted in determining the countervailability of the Export Buyer's Credit Program (EBCP) because the Government of China (GOC) did not provide the requested information needed to allow Commerce to fully analyze this program and, thus, had not cooperated to the best of its ability in response to our information requests.² Guizhou Tyre challenged Commerce's determination to apply AFA with respect to this program, and Commerce's finding that the synthetic rubber market was not distorted during the POR, as well as other aspects of the *Final Results*.

On May 15, 2019, the Court remanded the *Final Results* to Commerce to: (1) reconsider our decision to apply AFA with respect to the EBCP; and (2) reconsider or further explain our market distortion decision with respect to the synthetic rubber market in China.³ On August 27, 2019, Commerce reconsidered its decision to apply AFA with respect to the EBCP and provided additional explanation in support of its treatment of the program. Commerce also reexamined its synthetic rubber market distortion finding, providing a more detailed analysis of market conditions, and continued to find that the synthetic rubber market was not distorted in China during the POR.

¹ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM), as amended, *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review, 2015*, 83 FR 32078 (July 11, 2018).

² See IDM at 13-14.

³ See *Guizhou Tyre Co., Ltd. et al. v. United States*, 389 F. Supp. 3d 1315, 1329 (May 15, 2019).

On December 10, 2019, the Court affirmed Commerce's additional explanation and finding of market distortion in the Chinese synthetic rubber market.⁴ However, the Court ordered that Commerce reconsider its decision to apply AFA with respect to the EBCP, holding that Commerce had not established that a gap in the record existed such that the agency needed to rely on facts otherwise available.⁵

On March 5, 2020, Commerce reconsidered its decision to apply AFA in evaluating use of the EBCP and determined, under protest, that the EBCP program was not used by the respondents.⁶ Accordingly, Commerce calculated a revised subsidy rate of 29.44 percent for Guizhou Tyre and other non-selected companies.⁷

On June 5, 2020, the Court sustained Commerce's *Second Remand Results* and entered final judgement.⁸

Timken Notice

In its decision in *Timken*,⁹ as clarified by *Diamond Sawblades*,¹⁰ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of 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 June 5, 2020 final judgment sustaining Commerce's *Second Remand Results* constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results*.¹¹ This notice is published in fulfillment of the *Timken* publication requirements. Accordingly, Commerce will continue the

⁴ See *Guizhou Tyre Co., Ltd. et al. v. United States*, 415 F. Supp. 3d 1335, 1339-40 (December 10, 2019) (*Second Remand Order*).

⁵ See *Second Remand Order*, 415 F. Supp. 3d 1335, 1340-44 (December 10, 2019).

⁶ See Results of Redetermination Pursuant to Court Remand (March 5, 2020) (*Second Remand Results*) at 3-4.

⁷ *Id.* at 4-5.

⁸ See *Guizhou Tyre Co., Ltd. et al. v. United States*, CIT Slip Op. 20-81, Consol. Ct. No. 18-00100 (June 5, 2020).

⁹ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

¹⁰ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹¹ See *Final Results*.

suspension of liquidation of the OTR Tires subject to this review pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, we are amending the *Final Results* with respect to the countervailing duty rates calculated for Guizhou Tyre and the non-selected companies. Based on the *Second Remand Results*, as affirmed by the Court, the revised countervailing subsidy rates for Guizhou Tyre and the non-selected companies, from January 1, 2015 through December 31, 2015, are 29.44 percent.¹²

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: June 15, 2020.

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

¹² See *Second Remand Results* at 4-5.

[FR Doc. 2020-13266 Filed: 6/18/2020 8:45 am; Publication Date: 6/19/2020]