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Yvette Springer,

Committee Liaison Officer.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-912]

#### Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC") covering the period February 20, 2008, through August 31, 2009. The administrative review ("AR") covers six exporters. We have preliminarily determined that certain exporters who participated fully and are entitled to a separate rate sold subject merchandise to the United States at prices below normal value ("NV") during the period of review ("POR"). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

We invite interested parties to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

**DATES:** *Effective Date:* October 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** Raquel Silva or Lilit Astvatsatrian, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-6475 or (202) 482-6412, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 4, 2008, the Department published the antidumping duty order on OTR Tires from the PRC.

See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 73 FR 51624 (September 4, 2008). On September 1, 2009, the Department published a notice of opportunity to request an administrative review of this order for the February 20, 2008, through, August 31, 2009, POR (hereinafter referred to as the 2008-2009 review). See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 45179 (September 1, 2009). In accordance with 19 CFR 351.213(b), interested parties made requests for review between September 23, 2009, and September 30, 2009, on fifteen exporters. On October 26, 2009, the Department initiated the 2008-2009 review.<sup>1</sup> GPX International Tire Corporation ("GPX") requested that the Department conduct a review of exports of eight of the fifteen exporters. On November 20, 2009, GPX withdrew its review request for seven of the eight exporters for which it requested review, but maintained its request that the Department conduct a review of Hebei Starbright Tire Co., Ltd. ("Starbright"). On January 22, 2010, the Department selected Starbright and TUTRIC as mandatory respondents. Between November 24, 2009, and February 24, 2010, three more parties withdrew their respective review requests related to these same exporters, including TUTRIC. On May 21, 2010, the Department rescinded the administrative reviews of OTR tires with respect to TUTRIC and seven additional exporters because all parties requesting reviews of these entities had withdrawn their respective requests.<sup>2</sup>

<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 54956, 54958 (October 26, 2009) ("*Initiation Notice*"). The Department initiated reviews of (1) Aeolus Tyre Co., Ltd. ("Aeolus"), (2) Guizhou Tire Co., Ltd. ("GTC"), (3) Hangzhou Zhongce Rubber Co., Ltd. ("Hangzhou Zhongce"), (4) Starbright, (5) Innova Rubber Co., Ltd. ("Innova"), (6) Jiangsu Feichi Co., Ltd. ("Feichi"), (7) KS Holding Limited/KS Resources Limited ("KS Ltd."), (8) Laizhou Xiongying Rubber Industry Co., Ltd. ("Laizhou Xiongying"), (9) Qingdao Free Trade Zone Full-World International Trading Co. ("Full World"), Ltd., (10) Qingdao Taifa Group Co., Ltd. ("Qingdao Taifa"), (11) Shandong Huitong Tyre Co., Ltd. ("Huitong"), (12) Tianjin Wanda Tyre Group ("Wanda"), (13) Tianjin United Tire & Rubber International Co., Ltd. ("TUTRIC"), (14) Triangle Tyre Co., Ltd. ("Triangle"), and (15) Weihai Zhongwei Rubber Co., Ltd. ("Weihai Zhongwei").

<sup>2</sup> See *New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 28567 (May 21, 2010). In addition

On January 28, 2010, Hanify & King, bankruptcy counsel to GPX, informed the Department of GPX's filing of a Chapter 11 petition under the United States Bankruptcy Code on October 26, 2009, which counsel claimed automatically stayed the Department's administrative proceedings with respect to GPX. On February 3, 2010, both domestic interested parties<sup>3</sup> submitted letters to the Department expressing concerns about the effect of GPX's bankruptcy petition on the ongoing administrative review. In response to parties' concerns, the Department extended regulatory deadlines for Titan and Bridgestone until resolution of those concerns. On February 12, 2010, as a result of Government closures during snowstorms, Import Administration tolled all deadlines by one calendar week. See Memorandum from DAS for Import Administration, "Tolling of Administrative Deadlines As A Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010, available at <http://ia.ita.doc.gov/ia-highlights-and-news.html>. On May 5, 2010, upon resolution of issues related to GPX's bankruptcy petition, the Department extended the deadlines for (1) Verification requests, (2) factual information submissions, (3) comments on surrogate country selection, and (4) submission of publicly available information for valuing factors of production.

On May 5, 2010, the Department selected Qingdao Free Trade Zone Full World International Trading Co., Ltd. ("Full-World") as the mandatory respondent to replace TUTRIC. On May 26, 2010, Full-World withdrew its request for an administrative review of its exports. On August 4, 2010, the Department published in the **Federal Register** a notice rescinding the administrative review of OTR tires with respect to Full-World.<sup>4</sup>

On June 7, 2010, the Department published in the **Federal Register** a notice fully extending the time limit for the preliminary results of this review to October 7, 2010. See *New Pneumatic Off-the-Road Tires from the People's Republic of China: Extension of Preliminary Results of Antidumping*

to TUTRIC, the Department rescinded the reviews of Aeolus, Feichi, GTC, Huitong, Innova, Triangle and Wanda.

<sup>3</sup> Titan Tire Corporation ("Titan"), and Bridgestone Americas, Inc., and Bridgestone Americas Tire Operations, LLC (collectively "Bridgestone"), both domestic producers of the like product.

<sup>4</sup> See *New Pneumatic Off-the-Road Tires from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 46917 (August 4, 2010).

*Duty Administrative Review*, 75 FR 32158 (June 7, 2010). On July 23, 2010, and July 29, 2010, parties submitted comments on surrogate country selection. On July 29, 2010, parties submitted comments on surrogate values. On August 10, 2010, parties submitted rebuttal comments on surrogate values. Between January 22, 2010, and September 1, 2010, the Department issued to Starbright the original antidumping questionnaire, and six supplemental questionnaires. Between February 24, 2010, and September 10, 2010, Starbright submitted timely responses to the Department's seven questionnaires.

#### Period of Review

The POR is February 20, 2008, through August 31, 2009.

#### Scope of 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,<sup>5</sup> combine harvesters,<sup>6</sup> agricultural high clearance sprayers,<sup>7</sup> industrial tractors,<sup>8</sup> log-skidders,<sup>9</sup> agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;<sup>10</sup> (2) construction vehicles and equipment, including earthmover articulated dump products,

<sup>5</sup> 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.

<sup>6</sup> Combine harvesters are used to harvest crops such as corn or wheat.

<sup>7</sup> Agricultural sprayers are used to irrigate agricultural fields.

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> 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.

rigid frame haul trucks,<sup>11</sup> front end loaders,<sup>12</sup> dozers,<sup>13</sup> lift trucks, straddle carriers,<sup>14</sup> graders,<sup>15</sup> mobile cranes,<sup>16</sup> 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.<sup>17</sup> 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 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-type<sup>18</sup> or tubeless,

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> *I.e.*, "on-site" mobile cranes designed for off-highway use.

<sup>17</sup> A counterbalanced lift truck is a rigid framed, 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.*

<sup>18</sup> 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).

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, 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 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).

#### Non-Market Economy Country Status

No party contested the Department's treatment of the PRC as a non-market economy ("NME") country, and the Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews.<sup>19</sup> No interested party in this case has argued that we should do otherwise. Designation as an NME country remains in effect until it is revoked by the Department. See section 771(18)(C)(i) of the Act. As such, we continue to treat the PRC as an NME in this proceeding.

#### Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's factors of production ("FOPs"), valued in a surrogate market economy ("ME") country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Normal Value" section below. See Memorandum to The File, "Preliminary Results of the 2008–2009 Administrative Review of New Pneumatic Off-the-Road Tires from the People's Republic of China: Surrogate Value Memorandum," dated concurrently with this notice ("Surrogate Value Memorandum").

The Department determined that India, Indonesia, Ukraine, Peru, the

Philippines and Thailand are countries comparable to the PRC in terms of economic development.<sup>20</sup> Once we have identified the countries that are economically comparable to the PRC, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs are both available and reliable.

The Department has determined that India is the appropriate surrogate country for use in this review. The Department based its decision on the following facts: (1) India is at a level of economic development comparable to that of the PRC; (2) India is a significant producer of comparable merchandise; and (3) India provides the best opportunity to use quality, publicly available data to value the FOPs. Titan and Bridgestone provided comments on July 23, 2010, and July 29, 2010, respectively, arguing that India is the appropriate surrogate country for use in this review. Additionally, the data submitted by Titan, Bridgestone and Starbright for our consideration as potential surrogate values are sourced from India.

Therefore, because India best represents the experience of producers of comparable merchandise operating in an ME, we have selected India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the respondent's FOPs, when available and appropriate. See Surrogate Value Memorandum. We have obtained and relied upon publicly available information wherever possible.

#### Separate Rates

In the *Initiation Notice*, the Department applied a process by which exporters and producers not being individually reviewed may obtain separate-rate status in NME reviews. The process requires exporters and producers to submit a separate-rate status application ("SRA") or separate-rate status certification ("SRC").<sup>21</sup> However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control

over its export activities) has not changed. From November 30 to December 2, 2009, six exporters of the subject merchandise filed timely responses to the Department's SRAs or SRCs, as applicable.<sup>22</sup>

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate.<sup>23</sup> It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.<sup>24</sup> Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, at Comment 1 (May 6, 1991) ("Sparklers"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) ("Silicon Carbide"). However, if the Department determines that a company is wholly foreign-owned or located in an ME, then an SRA analysis is not necessary to determine whether it is independent from government control.<sup>25</sup>

#### A. Separate-Rate Recipients<sup>26</sup>

##### 1. Wholly Foreign-Owned

Starbright reported that during the POR it was wholly owned by GPX, a U.S. company, and KS Ltd. reported in its SRA that it is wholly-owned by a company located in Hong Kong. Therefore, consistent with the

<sup>22</sup> Hangzhou Zhongce; Starbright; KS Ltd.; Laizhou Xiongying; Qingdao Taifa; and Weihai Zhongwei.

<sup>23</sup> See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 24892, 24899 (May 6, 2010) (unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010)).

<sup>24</sup> *Id.*

<sup>25</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

<sup>26</sup> All separate-rate applicants receiving a separate rate are hereby referred to collectively as the "SR Recipients;" this includes the mandatory respondent.

<sup>19</sup> See, e.g., *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 52645 (September 10, 2008); see also *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3560 (January 21, 2009).

<sup>20</sup> See Memoranda to Wendy J. Frankel, Office Director, AD/CVD Operations, Office 8, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order Covering New Pneumatic Off-the-Road Tires from the People's Republic of China," dated January 25, 2010.

<sup>21</sup> See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005), available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

Department's practice, a further SRA analysis is not necessary to determine whether Starbright's and KS Ltd.'s export activities are independent from government control, and we have preliminarily granted a separate rate to Starbright and KS Ltd.<sup>27</sup>

## 2. Wholly Chinese-Owned Companies

Hangzhou Zhongce, Laizhou Xiongying, Qingdao Taifa, and Weihai Zhongwei stated that they are wholly Chinese-owned companies (collectively "PRC SR Applicants"). Therefore, the Department must analyze whether these respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

### a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.<sup>28</sup>

The evidence provided by the PRC SR Recipients<sup>29</sup> supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.

### b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the

proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>30</sup> The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates. The evidence placed on the record of this review by the PRC SR Recipients demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporters' exports of the merchandise under consideration, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

### Rate for Non-Selected Companies

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. For the exporters subject to a review that were determined to be eligible for separate rate status, but were not selected as mandatory respondents, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on FA.<sup>31</sup> For this administrative review, the Department has calculated a positive margin for the single mandatory respondent, Starbright. Accordingly, for these preliminary results, consistent with our practice, the Department has preliminarily established a margin for the SR Recipients based on the rate calculated for the single mandatory respondent, Starbright.

<sup>30</sup> See *Silicon Carbide*, 59 FR at 22586–87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

<sup>31</sup> See, e.g., *Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review*, 73 FR 8273, 8279 (February 13, 2008) (unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008)).

### Date of Sale

Section 401(i) of the Department's regulations states that:

In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

See also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–1092 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale). After examining the questionnaire responses and the sales documentation placed on the record by Starbright, we preliminarily determine that invoice date is the most appropriate date of sale for Starbright. Nothing on the record rebuts the presumption that invoice date should be the date of sale.

### Normal Value Comparisons

To determine whether Starbright's sales of OTR tires to the United States were made at less than NV, we compared constructed export price ("CEP") to NV, as described in the "Constructed Export Price," and "Normal Value" sections of this notice, pursuant to section 771(35) of the Act.

### Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for Starbright's sales because the sales were made by GPX, Starbright's U.S. affiliate in the United States.

We calculated CEP based on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(d)(1) of the Act, we made deductions from the starting price for billing adjustments, movement expenses, discounts and rebates, and selling expenses in the U.S. market. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where applicable, foreign inland freight and insurance from the plant to the port of

<sup>27</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71104–05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

<sup>28</sup> See *Sparklers*, 56 FR at 20589.

<sup>29</sup> Collective reference for all respondents receiving a separate rate in this administrative review.

exportation, foreign inland insurance, ocean freight, marine insurance, U.S. Customs duty, U.S. brokerage and handling, U.S. inland freight from port to the warehouse, warehousing expense and U.S. inland freight from the warehouse to the customer. In accordance with section 772(d)(1) of the Act, the Department deducted, where applicable, commissions, credit expenses, warranty expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In calculating its reported indirect selling expenses, the company did not include a significant number of items that it later claimed should be excluded; however, it did not provide any substantiation for this claim. Accordingly, for purposes of these preliminary results of review, we have included these items in the indirect selling expense adjustment to U.S. price.<sup>32</sup> Further, we did not grant an offset to interest expenses for short-term interest income because Starbright did not demonstrate that any of GPX's interest income was generated from short-term assets. However, we will issue a post-preliminary supplemental questionnaire to Starbright requesting that it provide substantiating documentation for its claim that all of its originally excluded items should be excluded from indirect selling expenses, and provide Starbright an opportunity to provide evidence that any of GPX's interest income was short term in nature. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(d) of the Act, we calculated Starbright's credit expenses and inventory carrying costs based on the actual short-term interest rate reported for loans obtained by GPX during the POR.<sup>33</sup>

### Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

<sup>32</sup> See Memorandum to the File, "Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Analysis Memorandum for the Preliminary Determination: Hebei Starbright Tire Co., Ltd. ('Starbright')," dated October 7, 2010 ('Starbright Preliminary Analysis Memorandum').

<sup>33</sup> See Starbright Preliminary Analysis Memorandum.

The Department bases NV on FOPs because the presence of government controls on various aspects of NME economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, in these preliminary results, we have calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. In accordance with 19 CFR 351.408(c)(1), the Department normally uses publicly available information to value the FOPs. However, when a producer sources a meaningful amount of an input from an ME country and pays for it in ME currency, the Department may value the factor using the actual price paid for the input.<sup>34</sup> Further, the Department disregards prices it has reason to suspect may be subsidized.<sup>35</sup>

In accordance with the legislative history of the Omnibus Trade and Competitiveness Act of 1988, the Department continues to apply its longstanding practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.<sup>36</sup> In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.<sup>37</sup> Based on the existence of

<sup>34</sup> See 19 CFR 351.408(c)(1); see also *Lasko Metal Products v. United States*, 43 F.3d 1442, 1445-1446 (Fed. Cir. 1994) (affirming the Department's use of market-based prices to value certain FOPs).

<sup>35</sup> See, e.g., *China National Machinery Export Corp. v. United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003) (aff'd, 104 Fed. Appx. 183 (Fed. Cir. 2004)) ("China National Machinery"), and see *Frontseating Service Valves from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination*, 73 FR 62952 (October 22, 2008) (unchanged in *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009)) ("Frontseating Service Valves").

<sup>36</sup> Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

<sup>37</sup> See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at pages 4-5; *Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at

these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies.

### Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Starbright for the POR. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, public availability, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the ME inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). For a detailed description of all surrogate values used for Starbright, see the Surrogate Value Memorandum.

In past cases, it has been the Department's practice to value various FOPs using import statistics of the primary selected surrogate country from World Trade Atlas ("WTA"), as published by Global Trade Information Services ("GTIS").<sup>38</sup> However, in October 2009, the Department learned that Indian import data obtained from the WTA, as published by GTIS, began identifying the original reporting currency for India as the U.S. Dollar. The Department then contacted GTIS about the change in the original

page 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at pages 17, 19-20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at page 23.

<sup>38</sup> See *Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 74 FR 50946, 50950 (October 2, 2009) (unchanged in *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 74 FR 65520 (December 10, 2009)).

reporting currency for India from the Indian Rupee to the U.S. Dollar. Officials at GTIS explained that while GTIS obtains data on imports into India directly from the Ministry of Commerce, Government of India, as denominated and published in Indian Rupees, the WTA software is limited with regard to the number of significant digits it can manage. Therefore, GTIS made a decision to change the original reporting currency for Indian data from the Indian Rupee to the U.S. Dollar in order to reduce the loss of significant digits when obtaining data through the WTA software. GTIS explained that it converts the Indian Rupee to the U.S. Dollar using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded and converted.<sup>39</sup>

However, the data reported in the Global Trade Atlas ("GTA") software published by GTIS reports import statistics, such as from India, in the original reporting currency and, thus, these data correspond to the original currency value reported by each country. Additionally, the data reported in the GTA software are reported to the nearest digit and, thus, there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently, the Department will now obtain import statistics from GTA for valuing various FOPs because the GTA import statistics are in the original reporting currency of the country from which the data are obtained, and have the same level of accuracy as the original data released.

We further adjusted material input values to account for freight costs incurred between the supplier and respondent. We used the freight rates published by <http://www.infobanc.com>, "The Great Indian Bazaar, Gateway to Overseas Markets." The logistics section of the website contains inland freight truck rates between many large Indian cities. The truck freight rates are for the period August 2008 through July 2009. See Surrogate Value Memorandum.

Starbright made raw materials purchases from ME suppliers. Therefore, in accordance with our practice outlined in *Antidumping Methodologies: Market Economy Inputs*,<sup>40</sup> where at least 33 percent of an

input is sourced from ME suppliers and purchased in an ME currency, the Department used actual weighted-average purchase prices to value these inputs.<sup>41</sup> Where the quantity of the input purchased from ME suppliers during the period is below 33 percent of the total volume of purchases of the input during the period, the Department weight-averaged the weighted average ME purchase price with an appropriate surrogate value.<sup>42</sup> See *Antidumping Methodologies: Market Economy Inputs*. For a complete description of the factor values we used, see the Surrogate Value Memorandum and the Starbright Preliminary Analysis Memorandum.

Where we could not obtain publicly available information contemporaneous with the POR with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the *International Financial Statistics* of the International Monetary Fund ("IMF").

To value electricity, we used price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication entitled "Electricity Tariff & Duty and Average Rates of Electricity Supply in India," dated March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided. See Surrogate Value Memorandum.

To value water, we used the revised Maharashtra Industrial Development Corporation ("MIDC") water rates available at <http://www.midcindia.com/water-supply>. See Surrogate Value Memorandum.

The Department valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing*

*Business 2010: India*, published by the World Bank. See Surrogate Value Memorandum.

To value steam coal, we used data obtained for grades A and B coal reported in the December 2007 Coal India Limited Circular. See Surrogate Value Memorandum.

To value warehousing, the Department used values obtained from the Board of Jawaharlal Nehru Port Trust's Web site,<sup>43</sup> a source identified and used in the less-than-fair-value investigation of this proceeding. See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 73 FR 51624 (Sept. 4, 2008), and accompanying Issues and Decision Memorandum at Comment 26. We applied these values to the average number of days that Starbright's subject merchandise is in inventory. See Surrogate Value Memorandum.

As a consequence of the decision of the Court of Appeals for the Federal Circuit ("Federal Circuit") in *Dorbest Ltd. v. United States*, 604 F. 3d 1363 (Fed. Cir. 2010), the Department is no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent Federal Circuit decision. For these preliminary results, we have calculated an hourly wage rate to use in valuing the reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise. To calculate the hourly wage data, we used wage rate data reported by the International Labor Organization ("ILO"). Because an industry-specific dataset relevant to this proceeding exists within the Department's preferred ILO source, we will be using industry-specific data to calculate a surrogate wage rate for this review, in accordance with section 773(c)(1) of the Act.

For this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 25 of the ISIC-Revision<sup>44</sup> 3 standard by countries

<sup>39</sup> 71 FR 61716, 61717-19 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

<sup>41</sup> For a detailed description of all actual values used for market-economy inputs, see New-Tec Preliminary Analysis Memorandum dated concurrently with this notice.

<sup>42</sup> We did not accept all of Starbright's claimed market economy purchases; however due to the proprietary nature of this issue, please see further discussion in the Starbright Preliminary Analysis Memorandum.

<sup>43</sup> <http://www.jnport.gov.in/CMSPage.aspx?PageID=27>.

<sup>44</sup> The ILO industry-specific data is reported according to the International Standard Industrial Classification of all Economic Activities ("ISIC") code, which is maintained by the United Nations Statistical Division and is periodically updated. These updates are referred to as "Revisions." The ILO, an organization under the auspices of the

<sup>39</sup> See *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances, and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 4.

<sup>40</sup> See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*,



determined to be both economically comparable and significant producers to the PRC. Specifically, the Department finds the two-digit description under ISIC–Revision 3 (“Manufacture of Rubber and Plastics Products”) to be the best available wage rate surrogate value on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. For further information on the calculation of the wage rate, see the Surrogate Value Memorandum.

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements for the year ending March 31, 2009, of Falcon Tyres Ltd., and TVS Srichakra Limited, and the financial statement for the year ending December 31, 2008, of Goodyear India Limited, Indian producers of comparable merchandise.<sup>45</sup> For these preliminary results, the Department determined not to use audited financial statements of Govind Rubber Limited because the overwhelming amount of production is cycle tires and tubes, and auto tires and tubes accounted for less than 1 percent of production. Based upon that information, we find that Govind Rubber Limited does not produce comparable merchandise. In addition, the Department has declined to use audited financial statements of three other Indian producers, JK Industries Ltd., MRF Tyres Ltd. and Balkrishna Industries Limited, because there is evidence that each of these companies received subsidies under programs previously found by the Department to be countervailable.<sup>46</sup> Nevertheless, the

United Nation, utilizes this classification for reporting purposes. Currently, wage and earnings data are available from the ILO under the following revisions: ISIC–Rev.2, ISIC–Rev.3, and most recently, ISIC–Rev.4. The ISIC code establishes a two-digit breakout for each manufacturing category, and also often provides a three- or four-digit subcategory for each two-digit category. Depending on the country, data may be reported at either the two-, three- or four-digit subcategory. Sub-Classification 25 of the ISIC–Revision 3 covers “Manufacture of Rubber and Plastics Products”.

<sup>45</sup> See Surrogate Value Memorandum.

<sup>46</sup> Specifically, JK Industries received subsidies under the Sales Tax Deferred from Government of Karnataka program (see page 40 of its financial statement), found by the Department to be countervailable. See *Notice of Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 45037 (August 8, 2006) (8/8/2006 PET Film). MRF Tyres received subsidies under the Export Promotion Capital Goods Scheme (see page 61 of its financial statement), found by the Department to be countervailable. See *Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India*, 70 FR 13460 (March 21, 2005) (3/21/2005 PET Resin). Balkrishna Industries received subsidies under the Duty Entitlement Passbook Scheme (see page 32 of its financial statement), found by the

Department may consider other publicly available financial statements for the final results, as appropriate.

In its original questionnaire response, Starbright stated that it does not produce any by-products, with the exception of a small amount of scrap tires. In a July 14, 2010, supplemental questionnaire, we requested that Starbright explain, as requested in the original questionnaire, the disposition of its by-products, and that it demonstrate the quantities of scrap product produced during the POR. In addition we asked Starbright to demonstrate that there is a commercial value to its claimed scrap through either sale, or the reintroduction into its production process. On August 17, 2010, Starbright provided a worksheet purportedly showing scrap production for July 2008; however it did not explain the worksheet or tie to any supporting documents. In this same response, Starbright also stated that it does not sell or reintroduce the scrap tires into production, but, if possible repaired and returned them to inventory. Because Starbright clearly and repeatedly stated that these scrap tires were neither sold nor re-used in production, but simply placed in inventory, it has not demonstrated that these scrap tires have any commercial value that would warrant a by-product offset.

On September 1, 2010, the Department requested for the third time that Starbright provide documentation to demonstrate the production, sale, and/or reintroduction of its scrap tires by-product, whereupon, on September 13, 2010, Starbright stated that due to time and staffing constraints, it had not been able to prepare the requested information. Because Starbright reported that it produced scrap tires but did not report or demonstrate that it sold or reintroduced the scrap tires into production and thus did not demonstrate either the production or commercial value of any such scrap, we have not granted Starbright its claimed by-product offset for tire scrap.

#### Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply “facts otherwise available” if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1)

and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (“AFA”) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

For the reasons discussed below, we determine that, in accordance with sections 776(a)(2) and 776(b) of the Act, the use of partial AFA is appropriate for the preliminary results with respect to Starbright.

#### 1. Products with Unreported Factors of Production

The original questionnaire states: “if you sold some products/models during the POR but did not produce them during the POR \* \* \* please contact the official in charge before preparing your response to this section of the questionnaire.”<sup>47</sup> However, in filing its

Department to be countervailable. See, e.g., 8/8/2006 PET Film and 3/21/2005 PET Resin.

<sup>47</sup> See Letter from the Department to Starbright, “Antidumping Duty Administrative Review of

Continued

questionnaire response, Starbright included several products in the reported U.S. sales list in its response to section C of the questionnaire for which it failed to provide any factors of production in its response to section D.<sup>48</sup> Furthermore, prior to submitting its response, Starbright never contacted the Department regarding this matter, despite the instructions in the questionnaire that it do so.

On July 1, 2010, the Department issued a supplemental questionnaire in which it asked Starbright to explain the missing product control numbers, and to provide FOPs for the product control numbers included in the section C database but missing from the section D database. In its August 2, 2010, response to the supplemental section C questionnaire, Starbright explained that these products were sold during the POR, but not produced during the POR. Starbright further stated that it would provide the FOP information for these products in its response to the section D supplemental questionnaire.<sup>49</sup>

On August 17, 2010 Starbright provided matching product control numbers in its FOP database for the products that it reported were sold during the POR but not produced during the POR. Starbright stated that it had “created similars” for the product control numbers that did not have matches in the FOP database, and that it had created a new variable in the FOP database for the “similar” product control number. Starbright also included a chart listing the control numbers for the products sold to the United States, and the similar control number created by Starbright.<sup>50</sup> However, based on Starbright’s explanation that it sold these products during the POR but did not produce these products during the POR, it was not clear whether Starbright produced the products prior to the POR, or purchased the products from another producer and how it derived the FOPs it reported for these products (e.g., did they reflect prior year’s production, production of other products, or something else entirely). Thus, on September 1, 2010, in a second section D supplemental questionnaire, the Department asked that Starbright explain the origin of the merchandise sold during the POR but not produced

by Starbright during the POR, and that Starbright provide evidence of its attempts to obtain FOP information from the producer or the merchandise if the products were purchased from another producer. The Department also explained that, if Starbright produced these products prior to the POR, it should provide the FOPs based on the prior production period (data it should have from the period of the investigation).

On September 13, 2010, Starbright argued that any request for FOPs based on the prior year’s production would require a revision to its entire FOP database and refused to comply with the Department’s request for the FOP data from the prior production period. However, Starbright failed to explain why having to report the prior year’s FOPs for products not produced in the current POR would require a revision to the entire FOP database, since the prior year’s reporting would only be necessary for the products sold but not produced during the instant POR. Starbright further contended that it was unable to provide the requested FOP data in such a short period of time.<sup>51</sup> Thus, Starbright disregarded the clear instructions in the original questionnaire, directing it to contact the Department if it had made sales of products during the POR that it did not produce during the POR. Starbright also refused to provide the information when requested by the Department in a supplemental questionnaire regarding the nature of what it had reported, thus rendering the data unusable. Moreover, Starbright provided no rationale for its creation of “similar” product control numbers for these products. Consequently, we preliminarily determine that partial facts available is warranted because necessary information is not on the record and because Starbright failed to provide requested information by the applicable deadlines and impeded the proceeding by not explaining the derivation of its reported “similar” FOPs. Section 776(a)(1), (a)(2)(B) and (a)(2)(C) of the Act. Moreover, by failing to notify the Department of the existence of sales for products not produced in the POR, despite the clear instruction in the questionnaire, and by failing to provide usable information by the applicable deadlines, the conditions of section 782(c)(1) and (e), to which Section 776(a)(2)(B) is subject, have not been satisfied. In addition, we determine that Starbright has not cooperated to the best of its ability by repeatedly failing to

provide the requested FOP data from the production period, despite numerous opportunities to do so. Accordingly, an adverse inference in using facts available under section 776(b) of the Act is warranted for Starbright with regard to this specific information. For the products sold but not produced by Starbright during the POR as adverse facts available, we have applied the highest normal value for any control number in Starbright’s FOP database. See Starbright Preliminary Analysis Memorandum.

## 2. Rebates

The original questionnaire instructs respondents: “where available, provide documentation, including sample agreements, for each type of rebate.”<sup>52</sup> Starbright provided a chart in exhibit C-4 of its April 27, 2010, section C response, in which it summarized and calculated the rebates granted in 2008; however, Starbright provided no documentation to support its reported rebates, and no explanation as to why such documentation was unavailable. Furthermore, Starbright explained that it was still compiling information related to rebates granted in 2009.<sup>53</sup>

On July 1, 2010, the Department issued a supplemental questionnaire, in which it copied the question for the original questionnaire and requested that Starbright respond “in full.”<sup>54</sup> In its August 2, 2010, supplemental questionnaire response, Starbright submitted a revised exhibit C-4, in which it “expanded the summary to detail all customer codes,” but again provided no documentation, including copies of rebate agreements, and no explanation as to why it was unable to provide the requested information.<sup>55</sup>

On August 3, 2010, the Department requested that Starbright provide documentation to substantiate the rebate amounts for one sample customer reported in exhibit C-4 of its original section C response. On August 27, 2010, Starbright again revised its worksheet for 2008 rebates, and explained that the reported information “is from GPX’s system. As such, GPX believes these amounts to be substantiated.”<sup>56</sup> Starbright stated that based on information already provided, the

<sup>52</sup> See Questionnaire at C-23.

<sup>53</sup> See Starbright’s April 27, 2010, sections C questionnaire response at 35 and Exhibit C-4.

<sup>54</sup> See Letter from the Department to Starbright: “First Administrative Review of the Antidumping Duty Order on New Pneumatic Off-the-Road Tires from the People’s Republic of China: Supplemental Section C Questionnaire”, dated July 1, 2010, at 7.

<sup>55</sup> See Starbright’s August 2, 2010, supplemental questionnaire response at 22-24.

<sup>56</sup> See *id.* at 9.

Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Questionnaire,” dated January 22, 2010, at page D-1 (“Questionnaire”).

<sup>48</sup> See Starbright’s April 27, 2010, sections C and D questionnaire response.

<sup>49</sup> See Starbright’s August 2, 2010, supplemental questionnaire response at 5.

<sup>50</sup> See Starbright’s August 17, 2010, supplemental questionnaire response at 1 and Exhibit SD-2.

<sup>51</sup> See Starbright’s September 13, 2010, supplemental questionnaire response at 19.



Department “is able to calculate an antidumping margin that is substantiated by data and documentation drawn directly from GPX’s accounting system.”<sup>57</sup> With respect to the documentation that the Department repeatedly requested, such as copies of rebate agreements, Starbright stated that “it is virtually impossible for GPX to provide this documentation at this time.”<sup>58</sup> According to Starbright, as a result of GPX’s bankruptcy, “for all practical purposes, GPX, no longer exists \* \* \* and the human staff has long since been dismissed.”<sup>59</sup> As a result, Starbright argued that “it would be unduly burdensome to require GPX to provide this additional documentation.”<sup>60</sup>

With respect to its 2009 rebates, Starbright reported one program related solely to a specific customer, and another rebate program related to another specific customer. Starbright explained the relevant customer codes to which these two rebate programs were allocable. Starbright also reported an additional rebate program, claiming that a group of buyers “joined together in order to receive better large-scale pricing and/or rebates, (similar to a cooperative).”<sup>61</sup> Starbright explained that it was “still working to allocate the rebates” for this customer grouping, on a customer and/or product code basis.<sup>62</sup> While Starbright reported the 2009 rebate rate for this rebate program, and claimed it could identify the full amount of the rebate paid, it stated that it could not identify the group of customers that participated in this rebate program, and thus it allocated the total claimed amount paid out over all 2009 U.S. sales of subject merchandise.

On September 1, 2010, the Department explained that Starbright had failed to provide the requested documentation to substantiate the reported rebate amount for a previously-selected sample customer. The Department again requested that Starbright provide a copy of the rebate agreement that established the rebate amount for that customer, as well as rebate receipts or any other documents that substantiate the numbers reported in Starbright’s rebate worksheets.<sup>63</sup> The

Department also asked Starbright to document efforts to obtain the requested information in light of its claim that it would be unduly burdensome to require GPX to provide that documentation.<sup>64</sup> In response, Starbright provided a credit memo used to grant the customer a credit in the amount of the rebate, but no documentation establishing the rebate rate, and no explanation for why it was unable to provide this documentation repeatedly requested by the Department.<sup>65</sup> Starbright has still not allocated rebates to the cooperative customer grouping discussed in its August 27, 2010, response, and nor has it identified the members of this customer grouping. In response to the Department’s request for documentation of Starbright’s efforts to access substantiating documents, Starbright submitted a letter from the attorney for the liquidating supervisor for GPX explaining that, due to GPX’s liquidation, “complying with Commerce’s demands is extremely difficult.”<sup>66</sup> Starbright also submitted a declaration from a former GPX employee describing the liquidation process and a general summary of the employee’s efforts to retrieve requested documents.<sup>67</sup> Neither submission nor the narrative provided to explain the submissions indicated any specific attempts to access the requested documents before September 2010, more than eight months after the Department first requested the information. Because Starbright did not provide the requested data the Department preliminarily determines that it is appropriate to use facts available under sections 776(a)(1) and (a)(2)(B) of the Act. Because Starbright failed to promptly inform the Department of any difficulty in obtaining the data and failed to provide usable information by the applicable deadlines, the conditions of section 782(c)(1) and (e), to which section 776(a)(2)(B) is subject, have not been satisfied. Further, because Starbright did not satisfactorily demonstrate how it was unable to provide or unduly burdensome to provide the requested information, we determine that an adverse inference in using facts available under section 776(b) of the Act is warranted. As AFA, the Department is applying the reported rebate rate from this 2009 program to all 2009 sales for all customers, with the exception of the two customers identified by Starbright as having their

own rebate programs. *See* Starbright Preliminary Analysis Memorandum.

### Currency Conversion

We made currency conversions into U.S. dollars, where appropriate, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

### Preliminary Results of Review

We preliminarily find that the following margins exist:

Exporter	Percent margin
Hebei Starbright Tire Co., Ltd .....	20.74
Hangzhou Zhongce Rubber Co., Ltd.	20.74
KS Holding Limited/KS Resources Limited	20.74
Laizhou Xiongying Rubber Industry Co., Ltd.	20.74
Qingdao Taifa Group Co., Ltd .....	20.74
Weihai Zhongwei Rubber Co., Ltd	20.74

We have not made an adjustment to the U.S. price for export subsidies because Starbright was not found to have export subsidies in the most recently completed segment of the companion countervailing duty proceeding.<sup>68</sup>

### Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c). Interested parties may file rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, no later than five days after the date on which the case briefs are due. *See* 19 CFR 351.309(d). The Department requests that parties submitting written comments provide an executive summary and a table of authorities as well as an additional copy of those comments electronically.

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street

<sup>68</sup> Similarly, because no export subsidies were found to be applicable to “all others” in the most recently completed segment of the companion countervailing duty proceeding, we also have not adjusted the rate applied to the separate rate recipients.

<sup>57</sup> *See id.*

<sup>58</sup> *See id.*

<sup>59</sup> *See id.*

<sup>60</sup> *See id.* at 10.

<sup>61</sup> *See id.*

<sup>62</sup> *See id.*

<sup>63</sup> *See* Letter from the Department to Starbright: “First Administrative Review of the Antidumping Duty Order on New Pneumatic Off-the-Road Tires from the People’s Republic of China: Third Supplemental Sections A, C, and D Questionnaire”, dated September 1, 2010, at 5.

<sup>64</sup> *See id.* at 3–4.

<sup>65</sup> *See* Starbright’s September 13, 2010, supplemental questionnaire response at 14.

<sup>66</sup> *See id.* at 1–4 and Exhibit 4SA–1.

<sup>67</sup> *See id.*

and Constitution Avenue, NW., Washington, DC 20230. See 19 CFR 351.310(d). The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

#### Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3)(ii), the deadline for submission of publicly available information to value FOPs under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department generally will not accept in the rebuttal submission additional or alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed.<sup>69</sup> Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information. See 19 CFR 351.301(c)(3).

#### Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review.

Where the respondent reports reliable entered values, we calculate importer (or customer)-specific *ad valorem* rates

by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). See 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. See 19 CFR 351.212(b)(1). Where we do not have entered values for all U.S. sales, we calculate a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. See 19 CFR 351.106(c)(2).

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Starbright, Hangzhou Zhongce, KS Ltd., Laizhou Xiongying, Qingdao Taifa and Weihai Zhongwei, the cash deposit rate will be the company-specific rate established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific or exporter/producer-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 210.48 percent; and (4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 7, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-913]

#### New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of Hebei Starbright Tire Co., Ltd. (Starbright) under the countervailing duty order on certain new pneumatic off-the-road tires (OTR Tires) from the People's Republic of China (PRC) for the period December 17, 2007, through December 31, 2008. We preliminarily determine that subsidies are being provided to Starbright for the production and export of certain new pneumatic off-the-road tires from the PRC. See "Preliminary Results of Administrative Review" section, below. If the final results remain the same as the preliminary results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties at the rate indicated below. Interested parties are invited to comment on the preliminary results of this administrative review. See "Disclosure and Public Comments" section below.

**DATES:** *Effective Date:* October 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** Andrew Huston or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade

<sup>69</sup> See, e.g., *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission*, in Part, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.