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DEPARTMENT OF COMMERCE

International Trade Administration

A-533-869

Certain New Pneumatic Off-the-Road Tires from India: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Department) determines that imports of certain new pneumatic off-the-road tires (OTR tires) from India are not being, or are not likely to be, sold in the United States at less than fair value (LTFV). The final estimated weighted-average dumping margins of sales at LTFV are listed below in the section entitled “Final Determination.” The finding for whether critical circumstances exist for producers and exporters subject to the all-others rate is moot because the antidumping duty margins for Alliance Tires Private Limited (ATC) and Balkrishna Industries Limited (BKT) are zero. The period of investigation is January 1, 2015, through December 31, 2015.

DATES: Effective [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Trisha Tran, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6412, or (202) 482-4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2016, the Department published the *Preliminary Determination* in the *Federal Register*.¹ In the *Preliminary Determination*, we postponed the final determination until no later than 135 days after the date of publication of the *Preliminary Determination* in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act).²

A summary of the events that occurred since the Department published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.³ The Issues and Decision Memorandum is a public document, and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope Comments

In accordance with the *Preliminary Determination*, the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.⁴

¹ See *Certain New Pneumatic Off-the-Road Tires: Negative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 55431 (August 19, 2016) (“*Preliminary Determination*”) and accompanying Preliminary Decision Memorandum.

² See *Preliminary Determination*, 81 FR at 55432.

³ See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance “*Certain New Pneumatic Off-the-Road Tires from India: Issues and Decision Memorandum for the Final Determination of Sales at Less Than Fair Value*,” dated concurrently with this determination and hereby adopted by this notice (“*Issues and Decision Memorandum*”).

⁴ See *Preliminary Determination*, 81 FR at 55432, and accompanying Preliminary Decision Memorandum at “*Scope Comments*.”

In the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*.⁵ No interested party submitted scope comments in case or rebuttal briefs.

Therefore, the scope of this investigation remains unchanged for this final determination.⁶

Scope of the Investigation

The products covered by this investigation are OTR tires from India. For a complete description of the scope of the investigation, *see* Appendix I of this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice at Appendix II.

Verification

As provided in section 782(i) of the Act, in August and September 2016, we conducted sales and cost verifications of the questionnaire responses submitted by ATC and BKT. We used standard verification procedures, including an examination of relevant accounting and production records, as well as original source documents provided by both respondents.

Changes to the Dumping Margin Calculations Since the Preliminary Determination

Based on our analysis of the comments received, pre-verification findings, and our findings at verification, we made certain changes to the dumping margin calculations for each respondent, ATC and BKT. For a discussion of these changes, *see* the Issues and Decision Memorandum.

⁵ *Id.*; *see also Certain New Pneumatic Off-the-Road Tires from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 81 FR 7073 (February 10, 2016) (“*Initiation Notice*”).

⁶ The Department has added two additional subheadings from the Harmonized Tariff Schedule of the United States to the list included for convenience and customs purposes since the *Preliminary Determination*. No revisions were made to the written description of the subject merchandise.

Use of Adverse Facts Available

The Department has relied on partial adverse facts available under sections 776(a) and (b) of the Act.⁷ A full discussion of our decision to rely on adverse facts available is presented in the Issues and Decision Memorandum.

Final Determination of Critical Circumstances

On December 9, 2016, Petitioners⁸ filed a timely critical circumstances allegation pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(b), alleging that critical circumstances exist with respect to imports of the merchandise under consideration.⁹ The finding for whether critical circumstances exist with respect to producers and exporters subject to the all others rate is moot because the antidumping duty margins for ATC and BKT are zero.

Final Determination

The Department determines, as provided in section 735 of the Act, that the following weighted-average dumping margins exist for the period January 1, 2015 through December 31, 2015:

Exporter/Producer	Weighted-Average Margin (percent)	Cash Deposit Adjusted for Subsidy Offset
ATC Tires Private Ltd.	0.00 percent	Not Applicable
Balkrishna Industries Limited	0.00 percent	Not Applicable
All-Others	0.00 percent	Not Applicable

Consistent with section 735(c)(1) of the Act, the Department has not determined an estimated all-others rate because it has not made an affirmative final determination of sales at LTFV.

Suspension of Liquidation

Because the Department has not made an affirmative final determination of sales at

⁷ See Sections 776(a) and (b) of the Act.

⁸ Titan Tire Corporation (Titan) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (USW) (collectively, Petitioners).

⁹ Letter from ATC, “Certain New Pneumatic Off-the-Road Tires from India - Petitioners’ Critical Circumstances Allegation,” dated December 9, 2016.

LTFV, we are not directing U.S. Customs and Border Protection to suspend liquidation of any entries of OTR tires from India.

In the final determination of the companion countervailing duty investigation of OTR tires from India, the Department determined that the all other companies received a benefit from export subsidies.¹⁰ In the instant investigation, the antidumping duty margins ATC and BKT are zero and no cash deposits will be collected. Therefore, no adjustment is required for export subsidies pursuant to sections 735(c)(1) and 772(c)(1)(C) of the Act and 19 CFR 351.210(d).

Disclosure

We will disclose the calculations performed to interested parties in this proceeding within five days of the date of announcement, in accordance with 19 CFR 351.224(b).

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission of our final determination.

Notification Regarding Administrative Protective Orders (APOs)

This notice will serve as a reminder to parties subject to APOs of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

¹⁰ See *Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, dated concurrently with this notice.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

January 3, 2017

Date

Appendix I

Scope of the Investigation

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

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

Prefix designations:

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

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

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

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

Suffix designations:

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

DT – Tires primarily designed for sand and paver service.

NHS – Not for Highway Service.

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

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

IND – Drive wheel tractor tire used in industrial service.

SL – Service limited to agricultural usage.

¹¹ While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

FI – Implement tire for agricultural towed highway service.

CFO – Cyclic Field Operation.

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

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

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

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

The entire section on Off-the-Road tires;

The entire section on Agricultural tires; and

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

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

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

Specifically excluded from the scope are passenger vehicle and light truck tires, racing tires, mobile home tires, motorcycle tires, all-terrain vehicle tires, bicycle tires, on-road or on-highway trailer tires, and truck and bus tires. Such tires generally have in common that the symbol “DOT” must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle

safety standards. Such excluded tires may also have the following prefixes and suffixes included as part of the size designation on their sidewalls:

Prefix letter designations:

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

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

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

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

ST – Identifies a special tire for trailers in highway service.

Suffix letter designations:

TR – Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156” or plus 0.250”;

MH – Identifies tires for Mobile Homes;

HC – Identifies a heavy duty tire designated for use on “HC” 15” tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.

Example: 8R17.5 LT, 8R17.5 HC;

LT – Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service;

ST – Special tires for trailers in highway service; and

M/C – Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: Pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; aircraft tires; and turf, lawn and garden, and golf tires. Also excluded from the scope are mining and construction tires that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

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

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

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. List of Issues
- III. Background
- IV. Scope of the Investigation
- V. Discussion of the Issues:
 - Comment 1: Standard Differential Pricing Methodology
 - Comment 2: Unreported U.S. Sample Sales
 - Comment 3: Sales Outside the Ordinary Course of Trade
 - Comment 4: Commission Offset
 - Comment 5: ATC's Revised Cost Database Submitted After Verification
 - Comment 6: Affirmative Determination of ATC
 - Comment 7: Correction of Minor Errors from U.S. Sales Verification
 - Comment 8: Warranty
 - Comment 9: Other Discounts
 - Comment 10: Classification of BKT's Sales
 - Comment 11: Duty Drawback
 - Comment 12: CEP Offset
 - Comment 13: Quantity Unit of Measure
 - Comment 14: Correction of Verification Errors
 - Comment 15: Correction of *Preliminary Determination* Errors
- VI. Recommendation

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