

**DEPARTMENT OF COMMERCE****International Trade Administration****[A-549-821]****Polyethylene Retail Carrier Bags From Thailand: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review; 2008-2009**

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

**SUMMARY:** On February 11, 2013, the U.S. Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) final results of remand redetermination pursuant to the CIT's remand order.<sup>1</sup> Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in *Timken Co., v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment of the CIT in this case is not in harmony with the Department's final results of administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Thailand covering the period of review (POR) of August 1, 2008 through July 31, 2009, and is amending its final results of this review with respect to the weighted-average dumping margins calculated for Thai Plastic Bags Industries Company (TPBI).<sup>2</sup>

**DATES:** *Effective Date:* February 21, 2013.

**FOR FURTHER INFORMATION CONTACT:** Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-0410.

**SUPPLEMENTARY INFORMATION:** The Department published the final results of the 2008-2009 administrative review of the antidumping duty order on

PRCBs from Thailand on March 8, 2011. Both Thai Plastic Bags Industries Co., Ltd., (TPBI) and the Polyethylene Retail Carrier Bag Committee (and its individual members, Hilex Poly Co., LLC and Superbag Corp. (collectively, the petitioner)) timely filed complaints with the CIT to challenge various aspects of the *Final Results*. On June 18, 2012, the CIT remanded for the Department to provide further explanation for its construction of section 771(35) of the Tariff Act of 1930, as amended (the Act), with respect to antidumping duty investigations and administrative reviews and to reconsider its position regarding the application of the transactions disregarded rule to TPBI's purchases of linear-low-density resin from affiliated suppliers.<sup>3</sup>

On September 14, 2012, the Department filed the *Remand Results* with the CIT, in which the Department provided further explanation for its construction of section 771(35) of the Act, with respect to antidumping duty investigations and administrative reviews, reconsidered its position regarding the application of the transactions disregarded rule to TPBI's purchases of linear-low-density resin from affiliated suppliers, and revised its treatment of those transactions. Accordingly, the Department recalculated TPBI's weighted-average dumping margin from 20.15 percent to 21.29 percent. On November 13, 2013, the CIT affirmed the Department's *Remand Results*.<sup>4</sup>

TPBI appealed the CIT's decision to the CAFC. On March 31, 2014, the CAFC affirmed the Department's *Remand Results*.<sup>5</sup> The CAFC's holding is now final and conclusive.

**Timken Notice**

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the Federal Circuit held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's February 11, 2013, judgment constitutes a final decision of the CIT that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*.

<sup>3</sup> See *Thai Plastic Bags Industries Co., Ltd., v. United States*, 853 F. Supp. 2d 1267 (CIT 2012) (*Remand Order*).

<sup>4</sup> See *Thai Plastic Bags II*, 895 F. Supp. 2d at 1345.

<sup>5</sup> See *Thai Plastic Bags Industries Co., Ltd., v. United States*, 746 F.3d 1358 (Fed. Cir. 2014).

**Amended Final Results**

For the reasons stated above, the Department is amending its *Final Results* with respect to TPBI's weighted-average dumping margin for this POR. The revised weighted-average dumping margin for TPBI is 21.29 percent.

Accordingly, the Department will instruct United State Customs and Border Protection (CBP) to liquidate entries of subject merchandise by TPBI in accordance with 19 CFR 351.212(b)(1).<sup>6</sup> Because the order on PRCBs from Thailand was revoked in part with respect to TPBI effective July 28, 2010,<sup>7</sup> we will not instruct CBP to collect cash deposits for entries of subject merchandise by TPBI.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: July 15, 2015.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

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**DEPARTMENT OF COMMERCE****International Trade Administration****[A-570-016]****Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Initiation of Antidumping Duty Investigation**

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

**DATES:** *Effective:* July 21, 2014.

**FOR FURTHER INFORMATION CONTACT:** Toni Page and Emily Halle, Office VII, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1398 and (202) 482-0176, respectively.

**SUPPLEMENTARY INFORMATION:****The Petition**

On June 3, 2014, the Department of Commerce (Department) received an antidumping duty (AD) petition concerning imports of certain passenger vehicle and light truck tires (certain passenger tires) from the People's

<sup>6</sup> See *Final Results*, 76 FR at 12701-2.

<sup>7</sup> See *Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand*, 75 FR 48940 (August 12, 2010).

<sup>1</sup> See *Thai Plastic Bags Industries Co., Ltd., v. United States*, 895 F. Supp. 2d 1337 (CIT 2013) ("*Thai Plastic Bags II*"); *Results of Redetermination Pursuant to Court Remand, Thai Plastic Bags Industries Co., Ltd., Polyethylene Retail Carrier Bag Committee, Hilex Poly Co., LLC, and Superbag Corporation, v. United States*, Consol. Court No. 11-00086, dated September 14, 2012 (*Remand Results*).

<sup>2</sup> See *Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review*, 76 FR 12700 (March 8, 2011) (*Final Results*).

Republic of China (PRC), officially filed in proper form on behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (Petitioner).<sup>1</sup> The AD Petition was accompanied by a countervailing duty (CVD) petition concerning imports of certain passenger tires from the PRC. Petitioner is a recognized union, which represents the domestic industry engaged in the manufacture of passenger vehicle tires in the United States. On June 6, 2014, the Department requested additional information and clarification of certain areas of the Petition,<sup>2</sup> and on June 10, 2014, Petitioner filed responses to these requests.<sup>3</sup> On June 23 and July 7, 2014, Petitioner filed supplemental submissions to clarify the scope of the investigation.<sup>4</sup> Because it was not clear from the Petitions whether the industry support criteria had been met, the Department extended the time for initiating this investigation in order to further examine the issue of industry support by 20 additional days.<sup>5</sup> The extended initiation determination date of July 13, 2014, falls on a Sunday, a non-business day, so the Department's initiation determination is due no later than July 14, 2014, the next business day.<sup>6</sup>

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the

Act), Petitioner alleges that imports of certain passenger tires from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioner in support of its allegations.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because Petitioner is an interested party as defined in section 771(9)(D) of the Act, and has demonstrated sufficient industry support with respect to the initiation of the AD investigation that it is requesting.<sup>7</sup>

#### Period of Investigation

Because the Petition was filed on June 3, 2014, the period of investigation (POI) is October 1, 2013, through March 31, 2014.<sup>8</sup>

#### Scope of the Investigation

The product covered by this investigation is certain passenger tires from the PRC. For a full description of the scope of the investigation, see the "Scope of the Investigation" at the Appendix of this notice.

#### Comments on the Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, Petitioner pertaining to the proposed scope in order to ensure that the language of the scope is an accurate reflection of the products for which the domestic industry is seeking relief.<sup>9</sup> As discussed in the Preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).<sup>10</sup> The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information,<sup>11</sup> all such factual

information should be limited to public information. All such comments must be filed by 5:00 p.m. Eastern Time (EDT) on August 4, 2014, which is 20 calendar days from the signature date of this notice.<sup>12</sup> Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on August 14, 2014, which is 10 calendar days after the initial comments. The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must be filed on the records of the AD investigation, as well as the concurrent CVD investigation.

#### Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by 5:00 p.m. ET on the date specified by the Department. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadline.<sup>13</sup>

#### Comments on the Product Characteristics for the AD Questionnaire

The Department requests comments from interested parties regarding the appropriate physical characteristics of certain passenger tires to be reported in response to the Department's AD questionnaire. This information will be used to identify the key physical

<sup>12</sup> As 20 days from the signature date will be Saturday August 2, 2014, the next business day for filing comments will be Monday August 4, 2014. See *Next Business Day Rule*.

<sup>13</sup> See 19 CFR 351.303(b)(1); see also *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using IA ACCESS can be found at <https://iaaccess.trade.gov/help.aspx> and a handbook can be found at <https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

<sup>1</sup> See "Petition for the Imposition of Antidumping Duties on Imports of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China," (June 3, 2014) (Petition).

<sup>2</sup> See Letter to Petitioner, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Supplemental Questions," June 6, 2014 (General Issues Supplemental Questions).

<sup>3</sup> See Letter from Petitioner "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China—Petitioner's Response to the Department's June 6, 2014 Supplemental Questions—Antidumping," June 10, 2014 (AD Supplement); see also "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China—Petitioner's Response to the Department's June 6, 2014 Supplemental Questions regarding General Issues," June 10, 2014 (General Issues Supplement).

<sup>4</sup> See Letter from Petitioner, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China—Petitioner's Scope Clarification Request," June 23, 2014 (Scope Supplement); see also Petitioner's filing "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China—Petitioner's Second Scope Clarification Request," July 7, 2014 (Second Scope Supplement).

<sup>5</sup> See *Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping and Countervailing Duty Petitions: Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China*, 79 FR 35725 (June 24, 2014).

<sup>6</sup> See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005) (*Next Business Day Rule*).

<sup>7</sup> See "Determination of Industry Support for the Petition" section, below.

<sup>8</sup> See 19 CFR 351.204(b)(1).

<sup>9</sup> See General Issues Supplemental Questionnaire; see also General Issues Supplement at 2–5 and Exhibits I–SQ–2 through I–SQ–6; Scope Supplement at 2–3 and Exhibit 1; see also Second Scope Supplement at 2 and Exhibit 1.

<sup>10</sup> See *Antidumping Duties; Countervailing Duties (Final Rule)*; 62 FR 27296, 27323 (May 19, 1997).

<sup>11</sup> See 19 CFR 351.102(b)(21).

characteristics of the subject merchandise in order to report the relevant factors of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they believe are relevant to the development of an accurate list of physical characteristics. Specifically, interested parties may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe certain passenger tires, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, we must receive comments on product characteristics no later than August 4, 2014. Rebuttal comments must be received no later than August 14, 2014. All comments and submissions to the Department must be filed electronically using IA ACCESS, as referenced above.

#### Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the

industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,<sup>14</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.<sup>15</sup>

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we determine that certain passenger vehicle and light truck tires, as defined in the scope of the investigation, constitute a single domestic like product and we analyzed industry support in terms of that domestic like product.<sup>16</sup>

<sup>14</sup> See section 771(10) of the Act.

<sup>15</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

<sup>16</sup> See Antidumping Duty Investigation Initiation Checklist: Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China (AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Passenger Vehicle and Light Truck Tires from the

On June 12, 2014, we received comments on industry support from the Sub-Committee of Tire Producers of the China Chamber of Commerce of Metals, Minerals & Chemical Importers and the China Rubber Industry Association.<sup>17</sup> Petitioner responded to these comments on June 16 and 17, 2014.<sup>18</sup> In a meeting on July 8, 2014, the Government of the PRC also commented on industry support for the Petition.<sup>19</sup>

On June 17, 2014, the Department extended the initiation deadline by 20 days to poll the domestic industry in accordance with section 732(c)(4)(D) of the Act, because it was “not clear from the Petitions whether the industry support criteria have been met. . . .”<sup>20</sup>

On June 20, 2014, we issued polling questionnaires to all known producers of certain passenger vehicle and light truck tires in the United States, identified in the Petition and by the ITC, as well as all known unions, employee organizations, or *ad hoc* groups of workers.<sup>21</sup> We requested that the companies/workers complete the polling questionnaire and certify their responses by the due date specified in the cover letter to the questionnaire.<sup>22</sup> Petitioner provided comments on the polling questionnaire responses on July 8, 2014.<sup>23</sup>

People’s Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

<sup>17</sup> See Letter, “Request to Poll the Domestic Industry to Determine Petitioner Standing: Certain Passenger Vehicle and Light Truck Tires from China,” June 12, 2014.

<sup>18</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Petitioner’s Response to CCCMC and CRIA’s Request to Poll the Industry,” June 16, 2014; see also Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Additional Information in Response to CCCMC and CRIA’s Request to Poll the Industry,” June 17, 2014.

<sup>19</sup> See Memorandum, “Antidumping Duty Investigation of 1,1,1,2-Tetrafluoroethane from the People’s Republic of China and the Antidumping Duty and Countervailing Duty Petitions for Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Meeting with Officials from the Government of the People’s Republic of China,” July 9, 2014.

<sup>20</sup> See *Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping Duty and Countervailing Duty Petitions: Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China*, 79 FR 35725, 35726 (June 24, 2014).

<sup>21</sup> See Memorandum, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Polling Questionnaire,” June 20, 2014.

<sup>22</sup> For a detailed discussion of the responses received, see AD Initiation Checklist at Attachment II. The polling questionnaire and questionnaire responses are on file electronically via IA ACCESS and can also be accessed through the CRU.

<sup>23</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s

Our analysis of the data we received in the polling questionnaire responses indicates that the domestic producers and workers that support the Petition account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.<sup>24</sup> Accordingly, the Department determines that the industry support requirements of section 732(c)(4)(A) of the Act have been met. Therefore, the Department determines that Petitioner filed this Petition on behalf of the domestic industry in accordance with section 732(b)(1) of the Act because it is an interested party as defined in section 771(9)(D) of the Act and it demonstrated sufficient industry support with respect to the AD investigation that it is requesting the Department initiate.<sup>25</sup>

#### **Allegations and Evidence of Material Injury and Causation**

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>26</sup>

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; direct replacement of domestic shipments by subject imports; decline in shipments, reduced sales volumes, and production curtailments; decline in capacity utilization and reduced capacity allocated to U.S. production of certain passenger tires; decline in employment; adverse impact on union contract negotiations; and adverse impact on financial performance.<sup>27</sup> We assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we determined that these allegations are properly supported by adequate

evidence and meet the statutory requirements for initiation.<sup>28</sup>

#### **Allegation of Sales at Less Than Fair Value**

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate an investigation of imports of certain passenger tires from the PRC. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the AD Initiation Checklist.

#### **Export Price**

Petitioner based export price (EP) on import data obtained from the U.S. Department of Commerce's Foreign Trade Division Merchandise Imports database (Imports database) for certain passenger tires. Petitioner calculated the average unit values (AUVs) per kilogram for U.S. imports of certain passenger tires from the PRC entered during the POI under ten Harmonized Tariff Schedule of the United States (HTSUS) subheadings that cover certain passenger tires. As the Import database import values reflect customs values and therefore exclude U.S. import duties, freight, and insurance, Petitioner made adjustments to deduct unrebated value added tax, foreign inland freight, and brokerage and handling at port of exportation to derive a U.S. net price.<sup>29</sup>

#### **Normal Value**

Petitioner states that the Department has treated the PRC as a non-market economy (NME) country in every proceeding in which the PRC has been involved.<sup>30</sup> The presumption of NME status for the PRC has not been revoked by the Department and, therefore, in accordance with section 771(18)(C)(i) of the Act, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product for the investigation is appropriately based on factors of production (FOPs) valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and

granting of separate rates to individual exporters.

Petitioner contends that Thailand is the appropriate surrogate country for the PRC because: (1) It is at a level of economic development comparable to that of the PRC; (2) it is a significant producer of comparable merchandise; and (3) the data for Thailand for valuing factors of production are available and reliable.<sup>31</sup> Based on the information provided by Petitioner, we conclude that it is appropriate to use Thailand as a surrogate country for initiation purposes.<sup>32</sup> After initiation of this investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.<sup>33</sup>

Petitioner calculated NV using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. As Petitioner is a union representing workers in the domestic industry producing certain passenger tires and is not a domestic producer, Petitioner contends it does not have access to the proprietary information on the factors of production necessary to make certain passenger tires. Therefore, Petitioner based NV on publicly available information regarding the standard direct materials used to manufacture certain passenger tires from a number of publications.<sup>34</sup> Petitioner asserts that the publicly available raw material models it provided are representative, to the best of its knowledge, of the average makeup of certain passenger tires.<sup>35</sup> Using this information, Petitioner calculated the average percentage of total tire weight represented by each direct material for passenger car tires and for light truck tires. The information regarding the percentages of direct materials used to make a subject tire were applied to the average tire weight for each of the ten HTSUS categories of certain passenger tires obtained from the Imports database to calculate the average amount of each

Republic of China—Petitioner's Comments on Polling Responses," July 8, 2014.

<sup>24</sup> See AD Initiation Checklist, at Attachment II.

<sup>25</sup> *Id.*

<sup>26</sup> See Volume I of the Petition at I-18 and Exhibit I-12.

<sup>27</sup> See Volume I of the Petition, at I-15 through I-57 and Exhibits I-2, I-3, and I-12 through I-53; see also General Issues Supplement at 1 and Exhibit I-SQ-1.

<sup>28</sup> See AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China.

<sup>29</sup> See Volume II of the Petition at II-6 through II-7; AD Supplement at Exhibit II-SQ-16; and AD Initiation Checklist.

<sup>30</sup> See Volume II of the Petition at II-2.

<sup>31</sup> *Id.* at II-2 through II-6 and Exhibits II-1 through II-4.

<sup>32</sup> See AD Initiation Checklist.

<sup>33</sup> See 19 CFR 351.301(c)(3)(i). Note that this is the revised regulation published on April 10, 2013. See <http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt>.

<sup>34</sup> See Volume II of the Petition at II-8 through II-10 and Exhibits II-10 through II-21; see also AD Supplement at 3-5.

<sup>35</sup> *Id.*

direct material used in the manufacture of the subject merchandise.<sup>36</sup>

Petitioner valued the FOPs using reasonably available, public surrogate country data, specifically, Thai import data from the Global Trade Atlas (GTA) for the period October 2013 through March 2014.<sup>37</sup> Petitioner excluded from these GTA import statistics imports from countries previously determined by the Department to be NME countries, countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies, and, in accordance with the Department's practice, any imports that were labeled as originating from an "unspecified" country.<sup>38</sup> Petitioner valued most of the direct material inputs (synthetic rubber, fillers, compounding ingredients, reinforcing materials, scrap, and alternative materials) using GTA Thai import data.<sup>39</sup> Petitioner valued natural rubber using information from the Rubber Research Institute of Thailand.<sup>40</sup> The Department determines that the surrogate values used by Petitioner are reasonably available and, thus, are acceptable for purposes of initiation.

Petitioner calculated the average labor hours required to make one tire using the employment and production information from the financial statements of three PRC tire manufacturers (GITI Tire, Doublestar Tyre, and Guizhou Tyre Co., Ltd.).<sup>41</sup> Petitioner then used the weight-averaged amount of the three labor rates to determine an overall average of labor hours required to make one subject tire. Petitioner calculated the average hourly labor rate for an employee producing tires using a 2007 Thailand wage rate from the National Statistics Office's 2007 Industrial Census, and adjusted this rate for inflation using the consumer price index (CPI) data for Thailand published by the International Financial Statistics (IFS) and converted it to USD using the POI average exchange rate.<sup>42</sup>

Petitioner calculated financial ratios (*i.e.*, factory overhead expenses, selling, general, and administrative expenses, and profit) based on the 2013 year-end financial statements of Goodyear

(Thailand) Public Company Limited (Goodyear) and Hwa Fong Rubber (Thailand) Public Company Limited (Hwa Fong), Thai manufacturers of tires, for the year ending December 31, 2013.<sup>43</sup> Because information provided by Petitioner indicates that Hwa Fong produces bicycle and motorcycle tires, which are not subject merchandise, while Goodyear produces certain passenger tires, we are only relying on Goodyear's financial statements for financial ratios.<sup>44</sup>

#### Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of certain passenger tires from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on the comparison of net U.S. price to NV for the same or similar passenger tires in accordance with section 773(c) of the Act, Petitioner's estimated margins for certain passenger tires ranged from 45.80 to 87.99 percent.<sup>45</sup>

#### Initiation of AD Investigation

Based on our examination of the Petition on certain passenger tires from the PRC, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of certain passenger tires from the PRC are being, or likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation. For a discussion of evidence supporting our initiation determination, *see* the AD Initiation Checklist which accompanies this notice.

#### Respondent Selection

In accordance with our standard practice for respondent selection in AD investigations involving NME countries, we intend to issue quantity and value questionnaires to each potential respondent named in the Petition,<sup>46</sup> and will base respondent selection on the responses received. In addition, the Department will post the quantity and value questionnaire along with the filing

instructions on the Enforcement and Compliance Web site (<http://trade.gov/enforcement/news.asp>). Exporters and producers of certain passenger tires from the PRC that do not receive quantity and value questionnaires via mail may still submit a quantity and value response, and can obtain a copy from the Enforcement and Compliance Web site. The quantity and value questionnaire must be submitted by all PRC exporters/producers no later than August 1, 2014. All quantity and value questionnaires must be filed electronically using IA ACCESS.

#### Separate Rates

In order to obtain separate rate status in an NME AD investigation, exporters and producers must submit a separate rate application.<sup>47</sup> The specific requirements for submitting the separate rate application in the PRC investigation are outlined in detail in the application itself, which will be available on the Department's Web site at <http://trade.gov/enforcement/news.asp> on the date of publication of this initiation notice in the **Federal Register**. The separate rate application will be due 60 days after the publication of this initiation notice. For exporters and producers who submit a separate rate status application and have been selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the Department's AD questionnaire as mandatory respondents. The Department requires that the PRC respondents submit a response to the separate rate application by the deadline referenced above in order to receive consideration for separate rate status.

#### Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the

<sup>47</sup> *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation Involving Non-Market Economy Countries (April 5, 2005) (Separate Rates and Combination Rates Bulletin), available on the Department's Web site at <http://enforcement.trade.gov/policy/>.

<sup>36</sup> *Id.*

<sup>37</sup> *See* Volume II of the Petition at II-10 and Exhibit II-23.

<sup>38</sup> *Id.* at II-10 through II-11.

<sup>39</sup> *Id.* at Exhibit II-23.

<sup>40</sup> *Id.* at Exhibit II-24.

<sup>41</sup> *Id.* at II-14 and Exhibits II-25 through II-26; *see also* AD Supplement at 5-9 and Exhibits II-SQ-3, II-SQ-5, and II-SQ-6.

<sup>42</sup> *See* Volume II of the Petition at II-14 through II-15 and Exhibits II-27, II-32, and II-33; *see also* AD Supplement at 10 and Exhibit II-SQ-12.

<sup>43</sup> *See* Volume II of the Petition at II-15 through II-16 and Exhibits II-29 and II-30; *see also* AD Supplement at 10-13 and Exhibits II-SQ-13 through II-SQ-17.

<sup>44</sup> *See* AD Initiation Checklist under the "Adjustments to Normal Value" section.

<sup>45</sup> *See* AD Supplement at Exhibit II-SQ-17 (chart titled "Weighted average labor rate; original Goodyear financial ratios only (profit reduced)").

<sup>46</sup> *See* Volume I of the Petition at Exhibit I-9.

period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.<sup>48</sup>

#### Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the Government of the PRC. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters to be satisfied by the provision of the public version of the Petition to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

#### ITC Notification

We notified the ITC of our initiation, as required by section 732(d) of the Act.

#### Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which the ITC receives notice from the Department of initiation of the investigation, whether there is a reasonable indication that imports of certain passenger tires from the PRC are materially injuring, or threatening material injury to, a U.S. industry.<sup>49</sup> A negative ITC determination will result in the investigation being terminated.<sup>50</sup> Otherwise, this investigation will proceed according to statutory and regulatory time limits.

#### Submission of Factual Information

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and CVD proceedings: (1) The definition of factual information (19 CFR 351.102(b)(21)), and (2) the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i)

Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR

351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all proceeding segments initiated on or after May 10, 2013, and thus are applicable to this investigation. Please review the final rule, available at <http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt>, prior to submitting factual information for this investigation.

#### Extension of Time Limits

On September 20, 2013, the Department published *Extension of Time Limits, Final Rule*,<sup>51</sup> which modified one regulation related to AD and CVD proceedings regarding the extension of time limits for submissions in such proceedings (19 CFR 351.302(c)). These modifications are effective for all segments initiated on or after October 21, 2013, and thus are applicable to this investigation. Please review the final rule, available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm> prior to requesting an extension.

#### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>52</sup> Parties are hereby reminded that the Department issued a final rule with respect to certification requirements, effective August 16, 2013 and that the revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any AD or CVD proceedings initiated on or after August 16, 2013,

including this investigation, should use the formats for the revised certifications provided at the end of the *Final Rule*.<sup>53</sup> The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

#### Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at <http://enforcement.trade.gov/apo/index.html>.

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c).

Dated: July 14, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

#### Appendix—Scope of the Investigation

The scope of this investigation is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by this investigation may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol “DOT” on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:

P—Identifies a tire intended primarily for service on passenger cars.

LT—Identifies a tire intended primarily for service on light trucks.

Suffix letter designations:

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

All tires with a “P” or “LT” prefix, and all tires with an “LT” suffix in their sidewall markings are covered by this investigation regardless of their intended use.

In addition, all tires that lack a “P” or “LT” prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix 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

<sup>48</sup> See Separate Rates and Combination Rates Bulletin at 6 (emphasis added).

<sup>49</sup> See section 733(a) of the Act.

<sup>50</sup> *Id.*

<sup>51</sup> See 78 FR 57790 (September 20, 2013).

<sup>52</sup> See section 782(b) of the Act.

<sup>53</sup> See *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also the frequently asked questions regarding the *Final Rule*, available at the following: [http://enforcement.trade.gov/tlei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf).

listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book*, as updated annually.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope.

Specifically excluded from the scope of this investigation are the following types of tires: (1) Racing car tires, defined as tires for use exclusively on a race track; such tires do not bear the symbol "DOT" on the sidewall; (2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book*; (3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires; and (4) non-pneumatic tires, such as solid rubber tires.

The products covered by the investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.00, 4011.99.85.00, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XD367

### Endangered and Threatened Species; Recovery Plans

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, NMFS, announce that the Proposed Endangered Species Act (ESA) Recovery Plan for Snake River Sockeye Salmon (Proposed Plan) is available for public review and comment. The Proposed Plan addresses the Snake River Sockeye Salmon (*Onchorhynchus nerka*) evolutionarily significant unit (ESU) listed as endangered under the ESA. The geographic area covered by the Proposed Plan is the Sawtooth Valley in Idaho including the Upper Salmon River and its tributaries, Stanley Lake, Redfish Lake, Yellowbelly Lake, Pettit Lake, and Alturas Lake. As required under the ESA, the Proposed

Plan contains objective, measurable delisting criteria, site-specific management actions necessary to achieve the Proposed Plan's goals, and estimates of the time and costs required to implement recovery actions. We are soliciting review and comment from the public and all interested parties on the Proposed Plan.

**DATES:** We will consider and address, as appropriate, all substantive comments received during the comment period. Comments on the Proposed Plan must be received no later than 5 p.m. Pacific daylight time on September 19, 2014.

**ADDRESSES:** Please send written comments and materials to Rosemary Furfey, National Marine Fisheries Service, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. Comments may also be submitted by email to: [nmfs.wcr.snakeriversockeyeplan@noaa.gov](mailto:nmfs.wcr.snakeriversockeyeplan@noaa.gov). Please include "Comments on Snake River Sockeye Salmon Recovery Plan" in the subject line of the email. Comments may be submitted via facsimile (fax) to (503) 230-5441. Electronic copies of the Proposed Plan are available on the NMFS Web site at [http://www.westcoast.fisheries.noaa.gov/protected\\_species/salmon\\_steelhead/recovery\\_planning\\_and\\_implementation/snake\\_river/snake\\_river\\_salmon\\_recovery\\_subdomain.html](http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/snake_river/snake_river_salmon_recovery_subdomain.html). Persons wishing to obtain an electronic copy on CD-ROM of the Proposed Plan may do so by calling Marcella LaFayette at (503) 231-2202 or by emailing a request to [marcella.lafayette@noaa.gov](mailto:marcella.lafayette@noaa.gov) with the subject line "CD-ROM Request for Snake River Sockeye Salmon Recovery Plan."

**FOR FURTHER INFORMATION CONTACT:** Rosemary Furfey, NMFS Snake River Sockeye Salmon Recovery Coordinator, at (503) 231-2149, or [rosemary.furfey@noaa.gov](mailto:rosemary.furfey@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

We are responsible for developing and implementing recovery plans for Pacific salmon and steelhead listed under the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*). Recovery means that the listed species and their ecosystems are sufficiently restored, and their future secured, to the point that the protections of the ESA are no longer necessary. Section 4(f)(1) of the ESA requires that recovery plans include, to the extent practicable: (1) Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2)

site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for each listed species unless such a plan would not promote its recovery.

We believe it is essential to have local support of recovery plans by those whose activities directly affect the listed species and whose continued commitment and leadership will be needed to implement the necessary recovery actions. We therefore support and participate in locally led, collaborative efforts to develop recovery plans that involve state, tribal, and federal entities, local communities, and other stakeholders. For this Proposed Plan for endangered Snake River Sockeye Salmon, we worked collaboratively with local state, tribal, and Federal partners to produce a recovery plan that satisfies the ESA requirements. We have determined that this *Proposed ESA Recovery Plan for Snake River Sockeye Salmon* meets the statutory requirements for a recovery plan and are proposing to adopt it as the ESA recovery plan for this endangered species. Section 4(f) of the ESA, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided prior to final approval of a recovery plan. This notice solicits comments on this Proposed Plan.

#### Development of the Proposed Plan

For the purpose of recovery planning for the ESA-listed species of Pacific salmon and steelhead in Idaho, Oregon and Washington, NMFS designated five geographically based "recovery domains." The Snake River Sockeye Salmon ESU spawning range is in the Interior Columbia domain. For each domain, NMFS appointed a team of scientists, nominated for their geographic and species expertise, to provide a solid scientific foundation for recovery plans. The Interior Columbia Technical Recovery Team included biologists from NMFS, other federal agencies, states, tribes, and academic institutions.

A primary task for the Interior Columbia Technical Recovery Team was to recommend criteria for determining when each component population with an ESU or distinct population segment (DPS) should be considered viable (i.e., when they are have a low risk of extinction over a 100-year period) and when ESUs or DPSs have a risk of extinction consistent with no longer needing the protections of the ESA. All Technical Recovery Teams used the