

limited to, tow-behind brush mowers, grinders, and vertical shaft generators. The subject engines are spark ignition, single or multiple cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 225 cubic centimeters (cc) and a maximum displacement of 999cc. Typically, engines with displacements of this size generate gross power of between 6.7 kilowatts (kw) to 42 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of this proceeding. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of this proceeding.

For purposes of this investigation, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: Crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as an oil pan, manifold, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of this investigation. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (e.g., ignition modules, ignition coils) for synchronizing with the motor to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third-country does not remove the engine from the scope.

The engines subject to this investigation are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 8407.90.1020, 8407.90.1060, and 8407.90.1080. The engine subassemblies that are subject to this investigation enter under HTSUS 8409.91.9990. Engines subject to this investigation may also enter under HTSUS 8407.90.9060 and 8407.90.9080. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

## Appendix II

### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Scope of the Investigation
- V. Injury Test
- VI. Preliminary Negative Determination of Critical Circumstances
- VII. New Subsidy Allegation
- VIII. Alignment

- IX. Diversification of China's Economy
- X. Subsidies Valuation
- XI. Benchmarks and Interest Rates
- XII. Use of Facts Otherwise Available and Adverse Inferences
- XIII. Analysis of Programs
- XIV. Calculation of the All-Others Rate
- XV. ITC Notification
- XVI. Verification
- XVII. Disclosure and Public Comment
- XVIII. Recommendation

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-913]

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

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

**SUMMARY:** On June 5, 2020, the United States Court of International Trade (the Court) sustained the Department of Commerce's (Commerce) remand redetermination pertaining to the 2015 administrative review of the countervailing duty (CVD) order on certain new pneumatic off-the-road tires (OTR Tires) from the People's Republic of China (China). Commerce is notifying the public that the Court has made a final judgment that is not in harmony with the final results of the 2015 administrative review, and that Commerce is amending the final results of the 2015 administrative review with respect to Guizhou Tyre Co., Ltd. (Guizhou Tyre) and non-selected companies.

**DATES:** Applicable June 15, 2020.

**FOR FURTHER INFORMATION CONTACT:** Chien-Min Yang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5484.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 13, 2018, Commerce published its *Final Results* pertaining to mandatory respondents Guizhou Tyre and Xuzhou Xugong Tyres Co., Ltd. (Xuzhou Xugong), along with other exporters.<sup>1</sup> The period of review (POR)

<sup>1</sup> See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results*

is January 1, 2015 through December 31, 2015. In the *Final Results*, Commerce found that the use of adverse facts available (AFA) was warranted in determining the countervailability of the Export Buyer's Credit Program (EBCP) because the Government of China (GOC) did not provide the requested information needed to allow Commerce to fully analyze this program and, thus, had not cooperated to the best of its ability in response to our information requests.<sup>2</sup> Guizhou Tyre challenged Commerce's determination to apply AFA with respect to this program, and Commerce's finding that the synthetic rubber market was not distorted during the POR, as well as other aspects of the *Final Results*.

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

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

On March 5, 2020, Commerce reconsidered its decision to apply AFA in evaluating use of the EBCP and determined, under protest, that the EBCP program was not used by the

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

<sup>2</sup> See IDM at 13-14.

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

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

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

respondents.<sup>6</sup> Accordingly, Commerce calculated a revised subsidy rate of 29.44 percent for Guizhou Tyre and other non-selected companies.<sup>7</sup>

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

### Timken Notice

In its decision in *Timken*,<sup>9</sup> as clarified by *Diamond Sawblades*,<sup>10</sup> the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Act, Commerce must publish a notice of a court decision that is not in harmony with a Commerce determination and must suspend liquidation of entries pending a conclusive court decision. The Court's June 5, 2020 final judgment sustaining Commerce's *Second Remand Results* constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results*.<sup>11</sup> This notice is published in fulfillment of the *Timken* publication requirements. Accordingly, Commerce will continue the suspension of liquidation of the OTR Tires subject to this review pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

### Amended Final Results

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

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

<sup>6</sup> See Results of Redetermination Pursuant to Court Remand (March 5, 2020) (*Second Remand Results*) at 3–4.

<sup>7</sup> *Id.* at 4–5.

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

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

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

<sup>11</sup> See *Final Results*.

<sup>12</sup> See *Second Remand Results* at 4–5.

### Notification to Interested Parties

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

Dated: June 15, 2020.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648–XA155]

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Chevron Richmond Refinery Long Wharf Maintenance and Efficiency Project in San Francisco Bay, California

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

**ACTION:** Notice; issuance of renewal incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a Renewal incidental harassment authorization (IHA) to Chevron Products Company (Chevron) to incidentally harass marine mammals incidental to the Long Wharf Maintenance and Efficiency Project (LWMEP) in San Francisco Bay, California.

**DATES:** This Renewal IHA is valid from June 15, 2020 through May 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** Bonnie DeJoseph, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Marine Mammal Protection Act (MMPA) prohibits the “take” of marine

mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, activities as described in the *Description of the Specified Activities and Anticipated Impacts* section of this notice is planned or (2) the activities as described in the *Description of the Specified Activities and Anticipated Impacts* section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of the initial