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REMAND
Public Document

GPX International Tire Corporation v. United States, Consol. Court No. 08-00285
Slip Op. 10-84 (August 4, 2010)

RESULTS OF REDETERMINATION PURSUANT TO REMAND

The Department of Commerce (“Department”) has prepared these results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“Court”) in GPX International Tire Corp. v. United States, Consol. Court No. 08-00285, Slip Op. 10-84 (Aug. 4, 2010) (“GPX II”). The Court’s opinion and remand order were issued in connection with Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) (“Final AD Determination”) and Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40480 (July 15, 2008) (“Final CVD Determination”), as well as the accompanying Issues and Decision Memoranda, the Amended Final AD Determination,¹ and the resulting antidumping duty (“AD”) and countervailing duty (“CVD”) orders.

In GPX II, the Court found that the Department’s offset methodology, adopted in the first remand redetermination as a result of the Court’s decision in GPX International Tire Corp. v.

¹ 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) (“Amended Final AD Determination”)

United States, 645 F. Supp. 2d 1231 (2009) (“GPX I”), was unreasonable and inconsistent with the statute. GPX II, Slip Op. 10-84, at 10. Accordingly, the Court instructed the Department to forego the imposition of the CVD law on the merchandise of Hebei Starbright Tire Co., Ltd. (“Starbright”). Id. at 11. The Court also instructed the Department to forego the imposition of the CVD law on the merchandise of Tianjin United Tire & Rubber International Co., Ltd. (“TUTRIC”). Id. at 12-13. Further, the Court granted the Department’s request for a voluntary remand with respect to its valuation of wire input in the AD investigation. Id. at 17-20. The Court affirmed the Final AD Determination in all other respects and found it unnecessary to address the various other CVD calculation issues raised by the parties in the litigation. Id. at 7, n.4, 13-17, 20-27. On August 25, 2010, the Department sent its draft remand redetermination to all parties for comment. On August 30, 2010, Titan and Bridgestone submitted comments regarding the Department’s draft redetermination. No other party submitted comments.

ANALYSIS

I. CONCURRENT APPLICATION OF THE AD AND CVD LAWS IN NON-MARKET ECONOMY COUNTRIES

At the outset, the Department notes that it respectfully disagrees with much of the Court’s opinions in GPX I and GPX II regarding the concurrent application of the AD and CVD laws in non-market economy (“NME”) countries. In particular, we disagree that there is a high potential for double remedies from the concurrent application of the NME AD methodology and our CVD methodology in this case. We disagree with the Court’s conclusion that the Department “is not statutorily required to apply CVD law under 19 U.S.C. § 1671.” Id. at 10. We further disagree that the statute necessitates the “coordination” of concurrent antidumping and countervailing duties. As a result, we do not agree that the Department must forego application of the CVD law

to Starbright and TUTRIC until we develop new methodologies to determine whether, and to what extent, “double counting” occurs when we concurrently apply the CVD law and the NME AD methodology.

Nevertheless, we shall, under protest, comply with the Court’s order in GPX II. With respect to the Final CVD Determination and resulting CVD order, we will exclude Starbright and TUTRIC from the CVD order, under protest, because the Court has instructed us not to apply the CVD law (or CVD remedies or duties) to Starbright and TUTRIC.

However, the Court’s ruling with respect to Starbright and TUTRIC does not apply to the third mandatory respondent in the CVD investigation, Guizhou Tyre Co., Ltd. (“GTC”), or to any other company covered by the “All Others” rate under the CVD order. Unlike Starbright and TUTRIC, GTC did not challenge the Final CVD Determination or the Final AD Determination, and it is not a party to the GPX litigation. Accordingly, the Final CVD Determination and Final AD Determination are final and conclusive with respect to GTC, except with respect to the calculation issues raised by Titan Tire Corporation and the United Steel, Paper and Forestry, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (“Titan”) and Bridgestone Americas, Inc. and Bridgestone America Tire Operations, LLC (“Bridgestone”). The issues raised by Titan and Bridgestone that pertain to GTC are the lawfulness of the Department’s uniform cut-off date for identifying and measuring subsidies in China and the lawfulness of our benefit calculation for government-provided loans.

In GPX I, the Court found that our application of a uniform cut-off date for identifying and measuring subsidies in China was unlawful. GPX I, 645 F. Supp. 2d at 1246-50. In our first remand redetermination, under protest, we did not apply a uniform cut-off date, but rather analyzed the different types of subsidies at issue to determine when each type became

identifiable and measurable.² We hereby incorporate the cut-off date analysis from the first remand redetermination, under protest, and find a subsidy rate of 3.35 percent for GTC. We note that the Court has not yet ruled on the Department's loan benefit calculation methodology from the Final CVD Determination, but that this issue has been fully briefed for the Court.

II. SURROGATE VALUE FOR STARBRIGHT AND TUTRIC'S WIRE CONSUMPTION

Among the issues addressed by the Department in the Final AD Determination was the valuation of Starbright's and TUTRIC's (collectively, "respondents") wire input using the factors of production methodology to calculate normal value in a non-market economy country pursuant to section 773(c)(1)(B) of the Tariff Act of 1930, as amended. In the Final AD Determination, the Department stated that it found nothing on the record to contradict Starbright's and TUTRIC's respective assertions during the investigation that they consumed "irregularly wound iron rod coils of circular cross-section measuring less than 14 mm in diameter; not electrode or cold heading quality; no indentations, ribs, grooves or other deformations," and thus continued to value respondents' wire consumption using the Indian Harmonized Tariff Schedule ("HTS") number 7213.91.90.³ However, upon initiation of the litigation challenging that final determination, the Department requested a voluntary remand to reconsider or give further explanation for its decision. In GPX II, the Court granted the Department's request for a voluntary remand to reconsider or give further explanation for its decision. GPX II, Slip Op. 10-84, at 19-20, 28.

² See Final Results of Redetermination Pursuant to Remand, GPX Int'l Tire Corp v. United States, Consol. Court No. 08-00285, dated Apr. 26, 2010, at 20-40, 50-53.

³ See Final AD Determination, accompanying Issues and Decision Memorandum at Comment 49; Memorandum to the File, entitled Investigation of Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Surrogate Values for the Final Determination, dated July 7, 2008, at Attachment 1.

After consideration of all the information on the record of this proceeding, the Department intends to value respondents' wire input consumption using a surrogate value based on Indian HTS category 7217.30 for "Wire of iron or non-alloy steel; plated or coated with other base metals."

As instructed by the Court, we have reconsidered our final determination of the underlying antidumping duty investigation for the purposes of valuation of the respondents' wire input. While the Department continued to value respondents' wire input using the HTS category for bars and rods for the final determination in the underlying investigation, upon further consideration of the record evidence, the Department finds that the record demonstrates that the input actually purchased and consumed by respondents in the production of pneumatic tires in the underlying investigation is, in fact, steel wire, and not wire rod.

Despite respondents' description that they consumed "irregularly wound iron rod coils of circular cross-section measuring less than 14 mm in diameter; not electrode or cold heading quality; no indentations, ribs, grooves or other deformations," which they argued was properly categorized under HTS category 7213.91.90, the Department finds that respondents' assertions that their input was wire rod are not supported by record evidence.⁴ Rather, the Department finds that documentation (e.g., purchase invoices and production records) provided by Starbright and TUTRIC demonstrate that both respondents purchased and consumed steel wire rather than wire rods and bars.⁵ Due to the business proprietary nature of the Department's analysis, for

⁴ See Starbright's January 16, 2008, supplemental questionnaire response at Exhibit 48 ("Starbright's SQR"); TUTRIC's January 14, 2008, supplemental questionnaire response at Exhibit 47 ("TUTRIC's SQR").

⁵ See Starbright's SQR at Exhibit 51; TUTRIC's SQR at Exhibit 53; Memorandum to the File, entitled Verification of the Factors Response of Hebei Starbright Co., Ltd. in the Antidumping Duty Investigation of Certain New Pneumatic Off-The-Road Tires from the People's Republic of China, dated May 5, 2008, at Exhibit 6A.; and Memorandum to the File, entitled Verification of the Sales and Factors Response of TUTRIC in the Antidumping Duty Investigation of Certain New Pneumatic Off-The-Road Tires from the People's Republic of China, dated May 2, 2008, at Exhibit 11.

further detail, see analysis memoranda with respect to Starbright and TUTRIC, dated August 25, 2010, for a discussion of the specific wire consumed by each respondent.⁶

Further, while both respondents explain that during production, “wires are passed through a die and coated with rubber,” neither respondent: 1) reported that it drew rod into wire during production; 2) provided documentation demonstrating purchase or consumption of wire rod; nor 3) reported factors of production associated with wire drawing, e.g., drawing powder.⁷ Because there is no record evidence that respondents purchased wire rod, or drew wire rod into wire to produce cord wire in its manufacturing process, and respondents’ purchase and consumption records described its wire input as “steel wire,” the Department reasonably finds that the consumption of “wire” by respondents in their questionnaire responses refers to steel wire classifiable under HTS 7217.30.⁸ Furthermore, the Department finds that respondents’ description of its production process is supported by the trade publication Rubber Chemistry and Technology, which explains that “brass-coated steel cords are the principal strengthening elements in specific regions of a pneumatic tire such as belt, carcass and bead” and further, that drawn steel wire is further manufactured to produce tire cord.⁹ Therefore, based on the analysis discussed above, the Department finds that the record evidence 1) demonstrates that both Starbright and Tutric consumed wire, not wire rod, in the production of subject merchandise, and 2) supports using the Indian HTS category 7217.30 to value both respondents’ wire input.¹⁰

⁶ See Memorandum to the File, entitled Analysis Memorandum for the Draft Redetermination Pursuant to Remand: Hebei Starbright Tire Co., Ltd., dated August 25, 2010 (“Starbright Remand Analysis Memorandum”), and Memorandum to the File, entitled Analysis Memorandum for the Draft Redetermination Pursuant to Remand: Tianjin United Tire & Rubber International, dated August 25, 2010 (“TUTRIC Remand Analysis Memorandum”).

⁷ See Starbright’s November 21, 2007, section D questionnaire response at D-4 (“Starbright’s DQR”) and TUTRIC’s November 21, 2007, section D questionnaire response at D-4 (“TUTRIC’s DQR”).

⁸ See Starbright’s DQR at Exhibit D-5; TUTRIC’s DQR at Exhibit D-5.

⁹ See Titan’s April 4, 2008, Final Surrogate Value Submission at Attachment 1.

¹⁰ See Starbright Remand Analysis Memorandum and TUTRIC Remand Analysis Memorandum for more detailed discussion of the business proprietary information and revised margin calculation.

III. COMMENTS FROM INTERESTED PARTIES

As noted above, we issued a draft remand redetermination to parties on August 25, 2010, and received comments on the draft from Titan and Bridgestone on August 30, 2010.

Comment 1: Concurrent Application of the AD and CVD Laws in NMEs and Applicability of the Court's Order

Titan and Bridgestone express their disagreement with the Court's findings and support the Department's decision to issue its remand redetermination under protest. Titan and Bridgestone urge the Department to reiterate that its analysis in the remand redetermination is being made under protest and without prejudice. Titan requests the Department to clarify in the remand redetermination that the Court's ruling with respect to Starbright and TUTRIC does not apply to any other company covered by the "All Others" rate under the CVD order in addition to GTC.

Department's position:

The Department has previously stated that it disagrees with much of the Court's opinions in GPX I and GPX II and that it is submitting this remand redetermination under respectful protest. The Department agrees with Titan that a clarification is warranted and has revised this remand redetermination to state that the Court's ruling with respect to Starbright and TUTRIC does not apply to GTC or any other company covered by the "All Others" rate under the CVD order because those companies did not challenge the Final CVD Determination or the Final AD Determination and are not parties to the GPX litigation.

Comment 2: Recalculation of the Weighted-Average Antidumping Duty Separate Rate

Titan and Bridgestone state that they concur with the Department's valuation of both respondents' wire input and the Department's recalculation of new antidumping duty rates.

However, Titan and Bridgestone argue that the Department should also have recalculated the separate rate for the non-mandatory respondents that qualified for separate-rate status using the revised Starbright and TUTRIC margins.

Department's Position:

We agree with Titan and Bridgestone that our draft determination did not address the recalculation of the weighted-average margin for the separate-rate respondents. We have revised our calculation of the separate rate based on Starbright's and TUTRIC's revised margins.¹¹

RESULTS OF REMAND REDETERMINATION

I. SUMMARY OF REVISED SUBSIDY RATES

In accordance with this remand redetermination, the Court's orders in GPX I and GPX II, and the Department's first remand redetermination, which cut-off date analysis for GTC is incorporated here, we have recalculated the subsidy rates as follows:

	<u>Final CVD Determination</u>	<u>Remand Determination</u>
GTC	2.45%	3.35%
Starbright	14.00%	n/a
TUTRIC	6.85%	n/a
All Others	5.62%	3.35%

¹¹ See Memorandum to the File, entitled Weighted-Average Margin Calculation for Separate Rate Companies for the Remand Redetermination, dated September 3, 2010.

II. SUMMARY OF REVISED WEIGHTED-AVERAGE DUMPING MARGINS

In accordance with this remand redetermination and the Court’s order in GPX II, we have recalculated weighted-average dumping margins as follows:

Exporter	Producer	Amended Final AD Determination	Remand Redetermination
Hebei Starbright Co., Ltd./GPX International Tire Corporation, Ltd.	Hebei Starbright Co., Ltd.	29.93	31.79
Tianjin United Tire & Rubber International Co., Ltd. (“TUTRIC”)	Tianjin United Tire & Rubber International Co., Ltd. (“TUTRIC”)	8.44	10.08
Aeolus Tyre Co., Ltd.	Aeolus Tyre Co., Ltd.	12.19	13.92
Double Coin Holdings Ltd.	Double Coin Holdings Ltd.	12.19	13.92
Double Coin Holdings Ltd.	Double Coin Group Rugao Tyre Co., Ltd.	12.19	13.92
Double Coin Holdings Ltd.	Double Coin Group Shanghai Donghai Tyre Co., Ltd.	12.19	13.92
Double Happiness Tyre Industries Corp., Ltd.	Double Happiness Tyre Industries Corp., Ltd.	12.19	13.92
Jiangsu Feichi Co., Ltd.	Jiangsu Feichi Co., Ltd.	12.19	13.92
Kenda Rubber (China) Co., Ltd./Kenda Global Holding Co., Ltd (Cayman Islands)	Kenda Rubber (China) Co., Ltd.	12.19	13.92
KS Holding Limited	Oriental Tyre Technology Ltd.	12.19	13.92
KS Holding Limited	Shandong Taishan Tyre Co., Ltd.	12.19	13.92
KS Holding Limited	Xu Zhou Xugong Tyres Co., Ltd.	12.19	13.92

Exporter	Producer	Amended Final AD Determination	<u>Remand Redetermination</u>
Laizhou Xiongying Rubber Industry Co., Ltd.	Laizhou Xiongying Rubber Industry Co., Ltd.	12.19	13.92
Oriental Tyre Technology Limited	Midland Off the Road Tire Co., Ltd.	12.19	13.92
Oriental Tyre Technology Limited	Midland Specialty Tire Co., Ltd.	12.19	13.92
Oriental Tyre Technology Limited	Xuzhou Hanbang Tyres Co., Ltd.	12.19	13.92
Qingdao Aonuo Tyre Co., Ltd.	Qingdao Aonuo Tyre Co., Ltd.	12.19	13.92
Qingdao Etyre International Trade Co., Ltd.	Shandong Xingda Tyre Co. Ltd.	12.19	13.92
Qingdao Etyre International Trade Co., Ltd.	Shandong Xingyuan International Trade Co. Ltd.	12.19	13.92
Qingdao Etyre International Trade Co., Ltd.	Shandong Xingyuan Rubber Co. Ltd.	12.19	13.92
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.	Qingdao Eastern Industrial Group Co., Ltd.	12.19	13.92
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.	Qingdao Qihang Tyre Co., Ltd.	12.19	13.92
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.	Qingdao Shuanghe Tyre Co., Ltd.	12.19	13.92
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.	Qingdao Yellowsea Tyre Factory	12.19	13.92
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.	Shandong Zhentai Tyre Co., Ltd.	12.19	13.92

Exporter	Producer	Amended Final AD Determination	Remand Redetermination
Qingdao Hengda Tyres Co., Ltd.	Qingdao Hengda Tyres Co., Ltd.	12.19	13.92
Qingdao Milestone Tyre Co., Ltd.	Qingdao Shuanghe Tyre Co., Ltd.	12.19	13.92
Qingdao Milestone Tyre Co., Ltd.	Shandong Zhentai Tyre Co., Ltd.	12.19	13.92
Qingdao Milestone Tyre Co., Ltd.	Shifeng Double-Star Tire Co., Ltd.	12.19	13.92
Qingdao Milestone Tyre Co., Ltd.	Weifang Longtai Tyre Co., Ltd.	12.19	13.92
Qingdao Qihang Tyre Co., Ltd.	Qingdao Qihang Tyre Co., Ltd.	12.19	13.92
Qingdao Qizhou Rubber Co., Ltd.	Qingdao Qizhou Rubber Co., Ltd.	12.19	13.92
Qingdao Sinorient International Ltd.	Qingdao Hengda Tyres Co., Ltd.	12.19	13.92
Qingdao Sinorient International Ltd.	Shifeng Double-Star Tire Co., Ltd.	12.19	13.92
Qingdao Sinorient International Ltd.	Tengzhou Broncho Tyre Co., Ltd.	12.19	13.92
Shandong Huitong Tyre Co., Ltd.	Shandong Huitong Tyre Co., Ltd.	12.19	13.92
Shandong Jinyu Tyre Co., Ltd.	Shandong Jinyu Tyre Co., Ltd.	12.19	13.92
Shandong Taishan Tyre Co., Ltd.	Shandong Taishan Tyre Co., Ltd.	12.19	13.92
Shandong Wanda Boto Tyre Co., Ltd.	Shandong Wanda Boto Tyre Co., Ltd.	12.19	13.92

Exporter	Producer	Amended Final AD Determination	Remand <u>Redetermination</u>
Shandong Xingyuan International Trading Co., Ltd.	Shangdong Xingda Tyre Co., Ltd.	12.19	13.92
Shandong Xingyuan International Trading Co., Ltd.	Xingyuan Tyre Group Co., Ltd.	12.19	13.92
Techking Tires Limited	Shandong Xingda Tyre Co. Ltd.	12.19	13.92
Techking Tires Limited	Shandong Xingyuan International Trade Co. Ltd.	12.19	13.92
Techking Tires Limited	Shandong Xingyuan Rubber Co. Ltd.	12.19	13.92
Triangle Tyre Co., Ltd.	Triangle Tyre Co., Ltd.	12.19	13.92
Wendeng Sanfeng Tyre Co., Ltd.	Wendeng Sanfeng Tyre Co., Ltd.	12.19	13.92
Zhaoyuan Leo Rubber Co., Ltd.	Zhaoyuan Leo Rubber Co., Ltd.	12.19	13.92

This redetermination is in accordance with the order of the Court in GPX II.

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date