



C-570-016
New Shipper Review
Shandong Xinghongyuan
12/01/2014 – 01/31/2016
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DATE: January 23, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Passenger Vehicle and Light Truck Tires from the People's
Republic of China: Decision Memorandum for the Preliminary
Rescission of the 2014-2016 Countervailing Duty New Shipper
Review

I. SUMMARY

In response to a request from Shandong Xinghongyuan Tire Co., Ltd. (SXT),¹ the Department of Commerce (the Department) is conducting a new shipper review (NSR) of the countervailing duty (CVD) order on passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (the PRC). The period of review (POR) is December 1, 2014, through January 31, 2016. As discussed below, the Department preliminarily determines that SXT did not satisfy the statutory and regulatory requirements to request an NSR. As such, the Department is preliminarily rescinding the NSR of SXT.

II. GENERAL BACKGROUND

Based on the certifications included in SXT's Request for Review,² the Department initiated an NSR of the CVD order on passenger tires from the PRC on May 27, 2016.³ The Department

¹ See Letter from SXT, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: New Shipper Review Request," February 25, 2016 (Request for Review).

² *Id.* at Exhibit 2.

³ See *Passenger Vehicle and Light Truck Tires from the People's Republic of China: Initiation of Countervailing Duty New Shipper Review; 2014-2016*, 81 FR 36262 (June 6, 2016).



subsequently issued a CVD questionnaire and several supplemental questionnaires.⁴ SXT provided timely questionnaire responses.⁵ Interested parties also submitted additional factual information in response to and/or to rebut various questionnaire responses.⁶ Petitioner provided pre-preliminary comments and factual information pertaining to benchmarks on December 22, 2016.⁷ The Government of China (the GOC), however, did not respond to either of the Department's questionnaires or otherwise participate in this proceeding.

On October 27, 2016, pursuant to section 751(a)(2)(B)(iii) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(2), the Department extended the deadline for the preliminary results of this NSR by 60 days (*i.e.*, until January 23, 2017).⁸

⁴ See Letter from the Department, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Countervailing Duty Questionnaire," July 13, 2016; *see also* Letter from the Department, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Supplemental Countervailing Duty Questionnaire in New Shipper Review," September 2, 2016 (GOC Supplemental Questionnaire) (addressed to the GOC); Letter from the Department, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Supplemental Countervailing Duty Questionnaire in New Shipper Review," September 2, 2016 (Supplemental Questionnaire) (addressed to SXT); Letter from the Department, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Business Proprietary Treatment of Certain Information in Supplemental Countervailing Duty Questionnaire Response and Request for Additional Information," September 23, 2016.

⁵ See Letter from SXT, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Response to Section III Identifying Affiliated Companies," July 27, 2016 (Affiliation Questionnaire Response); *see also* Letter from SXT, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Response to Section III of the CVD Questionnaire," August 23, 2016 (Initial Questionnaire Response); Letter from SXT, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Clarification and Additional Information," September 28, 2016 (Supplemental Questionnaire Response).

⁶ See Letter from United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (Petitioner), "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (C-570-017), New Shipper Review (Shandong Xinghongyuan): Petitioner's Rebuttal Factual Information and Comments on SXT's Response to Section III Identifying Affiliated Companies," August 10, 2016 (Rebuttal to Affiliation Questionnaire Response); *see also* Letter from SXT, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Response to Petitioner Comments," August 17, 2016 (Response to Petitioner Affiliation Comments); Letter from Petitioner, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (C-570-017), New Shipper Review (Shandong Xinghongyuan): Petitioner's Rebuttal Factual Information and Comments on SXT's Response to Section III of the Questionnaire," September 6, 2016 (Rebuttal to Initial Questionnaire Response); Letter from Petitioner, "PVL Tires from the People's Republic of China (C-570-017), New Shipper Review (Shandong Xinghongyuan): Petitioner's Rebuttal Factual Information to SXT's Supplemental Questionnaire Response," September 30, 2016 (Rebuttal to Supplemental Questionnaire Response); Letter from SXT, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Response to Petitioner," October 7, 2016 (Response to Petitioner Questionnaire Response Comments).

⁷ See Letter from Petitioners, "PVL Tires from the People's Republic of China (C-570-017), New Shipper Review (Shandong Xinghongyuan): Petitioner's Pre-Preliminary Comments," December 22, 2016; *see also* Letter from Petitioners, "PVL Tires from the People's Republic of China (C-570-017), New Shipper Review (Shandong Xinghongyuan): Petitioner's Benchmark Factual Information," December 22, 2016.

⁸ See Department Memorandum, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Extension of Deadline for Preliminary Results in Countervailing Duty New Shipper Review," October 27, 2016.

III. SCOPE OF THE ORDER

The product covered by the scope of the order is passenger tires from the PRC. For a full description of the subject merchandise, *see* the Appendix to the *Preliminary Rescission Notice*.

IV. ACCURACY OF NEW SHIPPER REVIEW CERTIFICATION

A. Background

Pursuant to 19 CFR 351.214(b)(2)(iii)(A), a request for an NSR must contain:

A certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States...during the period of investigation, including those not individually examined during the investigation.⁹

Accordingly, SXT's Request for Review included, *inter alia*, a certification that, "since the investigation was initiated," it "has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation" (POI) (*i.e.*, October 1, 2013, through March 31, 2014).¹⁰ The Department relied on this certification in its decision to initiate this NSR.¹¹

Following the submission of SXT's initial questionnaire responses,¹² Petitioner filed rebuttal information indicating that SXT is affiliated with Xingyuan Tires Group Co., Ltd. (the Xingyuan Group), which participated in the original CVD investigation of passenger tires from the PRC and made multiple entries into the United States during the POI.¹³ Based on Petitioner's submission, the Department issued supplemental questionnaires and placed additional factual information on the record regarding SXT's relationship to the Xingyuan Group.¹⁴ The Department's supplemental questionnaire for SXT summarized all of the evidence indicating that SXT and the Xingyuan Group are affiliated.¹⁵ Although SXT provided a timely supplemental questionnaire response, it offered no evidence to rebut or explain any of the materials or circumstances suggesting affiliation that were cited in the Department's questionnaire.¹⁶

⁹ See 19 CFR 351.214(b)(2)(iii)(A).

¹⁰ See Request for Review at Exhibit 2.

¹¹ See Department Memorandum, "Initiation of Countervailing Duty New Shipper Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Shandong Xinghongyuan Tire Co., Ltd.," March 31, 2016, at 2.

¹² See Affiliation Questionnaire Response; *see also* Initial Questionnaire Response.

¹³ See Rebuttal to Affiliation Questionnaire Response at 2-5; *see also* Rebuttal to Initial Questionnaire Response at 2-4; Department Memorandum, "Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Customs Entry Data for Respondent Selection," July 15, 2014, at Attachment, included as an appendix to this memorandum.

¹⁴ See Supplemental Questionnaire; *see also* GOC Supplemental Questionnaire.

¹⁵ *Id.* at 1-2.

¹⁶ See Letter from SXT, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Supplemental CVD Questionnaire Response," September 20, 2016 (resubmitted, with revised bracketing, as Attachment 1 to SXT's Supplemental Questionnaire Response). The Department provided SXT with 18 days to respond to its Supplemental Questionnaire and comment on and/or rebut the new factual information contained

B. Information on the Record

The following public information indicates that SXT is affiliated with the Xingyuan Group:

- The introduction to SXT's product catalogue, which was submitted by SXT in the concurrent antidumping duty NSR, and statements on the Xingyuan Group's website name SXT as a subsidiary of the Xingyuan Group.¹⁷
- According to information on the Ningde Municipal People's Government website, as well as statements from the websites of both SXT and the Xingyuan Group, Song Wenbo, who was identified as the director of SXT,¹⁸ was also the president and/or general manager of the Xingyuan Group during the POR.¹⁹
- On August 28, 2016, two weeks after Petitioner made its affiliation allegation and five days after SXT filed its initial questionnaire response, the ECIPS profile for Guangda Tires was revised, removing Song Wenbo as the company's legal representative.²⁰
- SXT and the Xingyuan Group have overlapping contact information (i.e., registered email addresses).²¹
- Song Wenbo is the brother of Song Wenyan,²² whom SXT identified as the general manager of the Xingyuan Group from October 31, 2014, through June 27, 2016 (i.e., during the POR).²³
- Until July 2016, the "About Us" link on SXT's website redirected to a "Company Profile" of the Xingyuan Group.²⁴
- The Xingyuan Group sells HILO tires, a brand "possessed" by the Xingyuan Group and manufactured at SXT's facility.²⁵
- Until August 2016, SXT and the Xingyuan Group had the same company logos on their respective websites.²⁶ The same logo also appeared on SXT's company letterhead, as used to certify submissions of factual information.²⁷

therein. See Letter from the Department, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Response to Request for Extension of Time in Countervailing Duty New Shipper Review," September 20, 2016.

¹⁷ See Rebuttal to Affiliation Questionnaire Response at 3 and Attachment 1.

¹⁸ See Request for Review at 5; see also Affiliation Questionnaire Response at 4 and Exhibit 1; Initial Questionnaire Response at 4.

¹⁹ See Rebuttal to Affiliation Questionnaire Response at 4 and Attachment 4; see also Supplemental Questionnaire at Exhibits 1-2.

²⁰ See Rebuttal to Initial Questionnaire Response at 3 and Exhibit 1.

²¹ See Rebuttal to Supplemental Questionnaire Response at 2; see also Supplemental Questionnaire at Exhibit 7.

²² See Supplemental Questionnaire Response, Attachment 1 at 4.

²³ See Response to Petitioner Affiliation Comments at 3.

²⁴ See Rebuttal to Affiliation Questionnaire Response at 4-5 and Attachment 5.

²⁵ See Supplemental Questionnaire at Exhibit 4, Attachment 1; see also Rebuttal to Supplemental Questionnaire Response at 2-3 and Attachment 4.

²⁶ See, e.g., Supplemental Questionnaire at Exhibit 4, Attachment 1.

²⁷ See, e.g., Request for Review at 5.

SXT, however, asserts that it is not affiliated with the Xingyuan Group.²⁸ Specifically, SXT makes the following claims:

- Neither Song Wenbo (*i.e.*, SXT’s director and majority shareholder) nor his immediate family held an executive position at or a significant interest in any other company in 2003 (*i.e.*, the year the Xingyuan Group was established) or from 2013 through 2016.²⁹
- Although there is a Song Wenbo that works for the Xingyuan Group, he is not the same Song Wenbo associated with SXT.³⁰
- While some promotional materials (*e.g.*, SXT’s product catalogue) “may lead to the assumption that there is an affiliation,” such materials were intended to create the appearance of association with a more well-known company (*i.e.*, the Xingyuan Group) “to raise {SXT’s} profile” among potential customers.³¹

C. Analysis

As noted above, in its Request for Review, SXT certified that it is not affiliated with any exporter or producer that exported passenger tires to the United States during the POI (*i.e.*, October 1, 2013, through March 31, 2014).³² SXT repeated this assertion in subsequent certified submissions, denying any affiliation with any other passenger tire manufacturer at any time since SXT was founded in 2013.³³ Section 771(33) of the Act defines affiliated persons as: (A) members of the same family; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employee; (E) any person directly or indirectly controlling or holding with power to vote five percent or more of the outstanding shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with any person; and/or (G) any person who controls any other person and such other person. Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. “Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”³⁴ The courts have upheld the Department’s interpretation of “any person” in section 771(33)(F) of the Act as encompassing “family.”³⁵ Thus, if members of a certain family control two companies, then these companies are affiliated under section 771(33)(F) of the Act.

Based on the information on the record, the Department preliminarily determines that SXT and the Xingyuan Group are affiliated. In particular, record evidence indicates that SXT and the

²⁸ See, *e.g.*, Response to Petitioner Affiliation Comments at 2-3.

²⁹ See Supplemental Questionnaire Response, Attachment 1 at 3-4.

³⁰ See Response to Petitioner Questionnaire Response Comments at 2.

³¹ See Response to Petitioner Affiliation Comments at 3.

³² See Request for Review at Exhibit 2.

³³ See Affiliation Questionnaire Response at 1 (naming Shandong Xinghongyuan International Trading Co., Ltd., a trading company, as SXT’s only affiliate); see also Response to Petitioner Affiliation Comments at 2.

³⁴ See 19 CFR 351.102(b)(37).

³⁵ See *Ferro Union Inc. v. Wheatland Tube Co.*, 44 F. Supp. 2d 1310, 1326 (CIT 1999) (stating, “{A} family can reasonably be considered an ‘entity’ or an ‘enterprise’ because family members likely share a common interest.”); see also *Dongkuk Steel Mill Co. v. United States*, 29 C.I.T. 724, 731 (2005).

Xingyuan Group are affiliated under subsections 771(33)(F) and (G) of the Act, as defined above.

Record evidence identifies SXT as a subsidiary of the Xingyuan Group.³⁶ The Department finds that, through this subsidiary relationship, the Xingyuan Group was legally or operationally in a position to exercise restraint or direction over SXT during the POR. SXT has not provided a satisfactory explanation of its self-identification as a subsidiary of the Xingyuan Group,³⁷ nor has it addressed the companies' shared contact information and logos. SXT's claim that its identification as an affiliate of the Xingyuan Group was merely for purposes of advertising and/or raising SXT's profile is insufficient to rebut the weight of evidence demonstrating affiliation and, furthermore, does not explain why the Xingyuan Group would name SXT as an affiliate on its website. Therefore, the Department finds that SXT and the Xingyuan Group are affiliated under section 771(33)(G) of the Act because the Xingyuan Group controls SXT as a subsidiary.

SXT indicated that Song Wenbo and Song Wenyuan are brothers and members of the same family.³⁸ In defining family groupings, the Department is not required to find that a group acted in concert. Rather, the Department is concerned with the potential of a group to act in concert out of common interest.³⁹ Thus, as brothers, Song Wenbo and Song Wenyuan are members of the same family group under section 771(33)(A) of the Act. It is undisputed that Song Wenbo is the Director of SXT.⁴⁰ Therefore, Song Wenbo controls SXT because, as Director, he is legally or operationally in a position to exercise restraint or direction over SXT. Similarly, SXT identified Song Wenyuan as the General Manager of the Xingyuan Group during the POR.⁴¹ Accordingly, Song Wenyuan controlled the Xingyuan Group during the POR because, as General Manager, he was legally or operationally in a position to exercise restraint or direction over the Xingyuan Group. Certain evidence on the record further indicates that Song Wenbo was the President and/or General Manager of the Xingyuan Group during the POR.⁴² As President or General Manager, Song Wenbo would have been legally or operationally in a position to exercise restraint or direction over the Xingyuan Group. Based on the evidence described above, we find that members of the Song family group (*i.e.*, Song Wenbo and Song Wenyuan) control both SXT and the Xingyuan Group. Therefore, we find that SXT and the Xingyuan Group are affiliated under section 771(33)(F) of the Act because they were under common control of the family group during the POR. We also find that, pursuant to section 771(33)(F) of the Act, SXT and the Xingyuan Group are affiliated because, during the POR, they were under the common control of Song Wenbo.

³⁶ See Rebuttal to Affiliation Questionnaire Response at 3 and Attachment 1.

³⁷ *Id.*

³⁸ See Supplemental Questionnaire Response, Attachment 1 at 4.

³⁹ See *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results and Rescission in Part of Antidumping Duty Administrative Review*, 69 FR 26361 (May 12, 2004), and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁰ See, *e.g.*, Request for Review at 5.

⁴¹ See Response to Petitioner Affiliation Comments at 3.

⁴² See Rebuttal to Affiliation Questionnaire Response at 4 and Attachment 4; see also Supplemental Questionnaire at Exhibits 1-2.

We note that there is conflicting evidence on the record regarding Song Wenbo's direct involvement with the Xingyuan Group. When the record is considered as a whole, however, we find there is insufficient evidence to support SXT's assertion that the Song Wenbo employed by SXT is different from the Song Wenbo employed by the Xingyuan Group. SXT's explanation is not corroborated by any reliable supporting documentation. SXT produced the Xingyuan Group's company profile from the ECIPS portal to support its claim that Song Wenbo is not a Xingyuan Group executive,⁴³ but it is the Department's understanding that information available on ECIPS is limited to what the company releases for public reference by creditors and may only include the names of promoter shareholders or other publicly identified company shareholders.⁴⁴ Therefore, although we find the information that is actually available on the ECIPS system to be reliable, we cannot ascertain its completeness and, accordingly, cannot ascertain the completeness of the Xingyuan Group's ECIPS profile, including its list of shareholders. In the circumstances of this proceeding, the Xingyuan Group's own identification of Song Wenbo as an executive on its website indicates that the information on ECIPS is incomplete.⁴⁵ In sum, SXT has not provided any reliable information to refute the overwhelming evidence that SXT and the Xingyuan Group—which produce the same subject merchandise, use the same logo, sell the same brand of tires, and refer to each other as affiliates—are run by two related individuals: Song Wenbo, and his brother, Song Wenyuan.

Accordingly, we find that SXT's request for an NSR was based on the inaccurately certified statement that SXT is not affiliated with any exporter or producer that exported subject merchandise to the United States during the POI. The evidence described above indicates that SXT is an affiliate of the Xingyuan Group.

As discussed above, information pertaining to Song Wenbo's familial ties and financial interests that was obtained from reliable public sources (*e.g.*, SXT's website, SXT's questionnaire response, the Xingyuan Group's website, and official GOC websites) supports a finding of affiliation. SXT asserts that neither Song Wenbo nor his immediate family worked at or held a substantial interest in the Xingyuan Group during the relevant time period.⁴⁶ This statement, however, is plainly contradicted by SXT's own submissions. Specifically, SXT identified Song Wenyuan as the Xingyuan Group's general manager and, in a subsequent questionnaire response, identified Song Wenyuan as Song Wenbo's brother.⁴⁷

The Department has rescinded prior reviews due to a requesting company's failure to satisfy the regulatory requirements under 19 CFR 351.214(b)(2). For example, the 2014 NSR of the AD order on small diameter graphite electrodes from the PRC was rescinded because the company under review did not accurately certify its first U.S. entry or shipment and its first U.S. sale, as

⁴³ See Response to Petitioner Affiliation Comments at Attachments 1-4.

⁴⁴ See Supplemental Questionnaire at 2 (stating the Department's understanding and seeking complete information regarding ownership and control, as well as complete financial statements, which SXT did not provide).

⁴⁵ See Rebuttal to Affiliation Questionnaire Response at Attachment 3; *see also* Supplemental Questionnaire at Exhibits 1-2.

⁴⁶ See Supplemental Questionnaire Response at 3-4.

⁴⁷ See Response to Petitioner Affiliation Comments at 3; *see also* Supplemental Questionnaire Response, Attachment 1 at 4.

required under 19 CFR 351.214(b)(2)(iv)(A) and (C), respectively.⁴⁸ The Department has also rescinded at least one NSR based on a similar finding of affiliation between the requesting company and an exporter of subject merchandise that made shipments to the United States during the POI.⁴⁹ Accordingly, for the reasons discussed above, we preliminarily find that SXT has not satisfied the regulatory requirements to request an NSR because it provided an inaccurate certification and, furthermore, that it is appropriate to rescind this NSR of the CVD order on passenger tires from the PRC.

V. RECOMMENDATION

We recommend approval of the preliminary findings described above.



Agree

Disagree

1/23/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

⁴⁸ See *Small Diameter Graphite Electrodes from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review*; 2014, 80 FR 62516 (October 16, 2015), and accompanying Issues and Decision Memorandum at 7; see also *Wooden Bedroom Furniture from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review*, 77 FR 21536 (April 10, 2012), and accompanying Issues and Decision Memorandum at 2-3.

⁴⁹ See *Raw Flexible Magnets from the People's Republic of China: Notice of Rescission of Countervailing Duty New Shipper Review*, 75 FR 52721 (August 27, 2010).

APPENDIX

Department Memorandum

“Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the
People’s Republic of China: Customs Entry Data for Respondent Selection”

July 15, 2014