

**Results of Redetermination Pursuant to  
*Hubbell Power Systems, Inc. v. United States*  
Consol. Court No. 11-00474, Slip Op. 12-123  
(September 20, 2012)**

**I. SUMMARY**

The U.S. Department of Commerce (“Department”) has prepared these results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or “Court”) in Hubbell Power Systems, Inc. v. United States, Court No. 11-00474, Slip Op. 12-123 (September 20, 2012) (“Remand Order”). In the final results of the first antidumping administrative review of certain steel threaded rod from the People’s Republic of China (“PRC”), the Department rescinded the review with respect to Gem Year Industrial Co., Ltd. (“Gem Year”) upon determining that Gem Year had no suspended entries.<sup>1</sup> As a result of rescinding the review with respect to Gem Year, the Department determined that Gem Year was ineligible for separate rate status and that its deposit rate would remain the PRC-wide entity rate of 206%.<sup>2</sup> On September 20, 2012, the CIT remanded the Final Results to the Department to reconsider its decision that Gem Year should be rescinded from the review. Specifically, the Court held that the Department’s decision to rescind Gem Year from review and not to conduct a separate rate analysis of Gem Year’s sales was not supported by substantial evidence or in accordance with the law.<sup>3</sup> The CIT instructed the Department to conduct, “at a minimum, a complete review of Gem Year’s separate rate application. If Gem Year is entitled to a separate rate and the parties do not agree otherwise, Commerce will also conduct a full examination of Gem Year’s sales. If Commerce determines that Gem Year is not entitled to a separate rate, Commerce must consider

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<sup>1</sup> See Certain Steel Threaded Rod from the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 68400, 68402 (November 4, 2011) (“Final Results”) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>2</sup> Id.

<sup>3</sup> See Remand Order at 6-19.

Gem Year's challenge to the 206% rate.”<sup>4</sup>

In accordance with the Court's instructions, and as discussed further below, the Department has, under respectful protest, reconsidered the Department's Final Results ruling and, in these remand results, assigns Gem Year the separate rate of 55.16%. The Department has not conducted a full review of Gem Year's sales.

## **II. ANALYSIS**

### **A. Review of Gem Year and Separate Rate Application**

#### Background

On November 4, 2011, the Department issued the final results of the first administrative review of certain steel threaded rod from the PRC.<sup>5</sup> After the Department released U.S. Customs and Border Protection data for respondent selection purposes, Gem Year submitted a voluntary quantity and value response claiming that it had sales to the United States during the period of review (“POR”).<sup>6</sup> Gem Year was chosen as one of two mandatory respondents and submitted complete section A, C, and D questionnaire responses.<sup>7</sup> Subsequently, the Department found that Gem Year had no suspended entries of subject merchandise during the POR, and deselected Gem Year as a mandatory respondent.<sup>8</sup>

Gem Year and its importer, Hubbell Power Systems, Inc. (“Hubbell”), challenged the Department's determination and, on September 20, 2012, the CIT issued a remand order in which it found that the Department improperly rescinded the review with respect to Gem Year and requested that the Department, at a minimum, review Gem Year's separate rate application.<sup>9</sup>

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<sup>4</sup> Id. at 20.

<sup>5</sup> See Final Results.

<sup>6</sup> See Gem Year's June 7, 2010 submission, at III.

<sup>7</sup> See Gem Year's October 20, 2010, October 26, 2010, November 9, 2010, and November 23, 2010 submissions.

<sup>8</sup> See Final Results, 76 FR at 68402.

<sup>9</sup> See Remand Order at 9-13, 20.

On November 13, 2012, the Department released its Draft Remand Results and invited parties to submit comments.<sup>10</sup> We received comments from the importer, Hubbell, and the petitioner, Vulcan Threaded Products (“Vulcan”), on November 27, 2012.

### Separate Rate

In response to the Court’s Remand Order, the Department has, under respectful protest,<sup>11</sup> conducted a review of Gem Year’s separate rate application.<sup>12</sup> The Department determines not to conduct a full review of Gem Year.

In proceedings involving non-market economy (“NME”) countries, it is the Department’s practice to begin with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.<sup>13</sup> It is the Department’s policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can affirmatively demonstrate that it is sufficiently independent so as to be entitled to a separate rate.<sup>14</sup> Exporters can demonstrate this independence through the absence of both de jure and de facto government control over export activities.<sup>15</sup> The Department analyzes each entity exporting the subject merchandise under a test

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<sup>10</sup> See Draft Results of Redetermination Pursuant to Hubbell Power Systems, Inc. v. United States, Consol. Court No. 11-00474, Slip Op. 12-123 (“Draft Remand Results”).

<sup>11</sup> See Viraj Group, Ltd. v. United States, 343 F.3d 1371, 1375-76 (Fed. Cir. 2003) (“Viraj”).

<sup>12</sup> The Department normally requires suspended entries of subject merchandise in order to conduct a review or separate rate analysis. See Certain Tissue Paper Products from the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 18497, 18500 (April 4, 2008) (noting past practice of not reviewing liquidated entries and citing reviews) which cites section 751(a)(2)(C) of the Tariff Act of 1930, as amended (stating that one of the purposes of an administrative review is to assess the current amount of antidumping duties on entries of subject merchandise).

<sup>13</sup> See Separate Rates and Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries, 70 FR 17233 (April 5, 2005); see also Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079, 53080 (September 8, 2006); see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China, 71 FR 29303, 29307 (May 22, 2006) (“Diamond Sawblades”).

<sup>14</sup> See, e.g., Diamond Sawblades, 71 FR at 29307.

<sup>15</sup> Id.

arising from Sparklers,<sup>16</sup> as further developed in Silicon Carbide.<sup>17</sup>

Gem Year demonstrated the absence of de jure government control over export activities by providing evidence of: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) the applicable legislative enactments decentralizing control of the companies; and 3) any other formal measures by the government decentralizing control of companies.<sup>18</sup> Gem Year demonstrated the absence of de facto government control over export activities by demonstrating that it: 1) sets its own export prices independent of the government and without the approval of a government authority; 2) retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) has the authority to negotiate and sign contracts and other agreements; and 4) has autonomy from the government regarding the selection of management.<sup>19</sup> Accordingly, the Department has granted a separate rate to Gem Year.

The Department assigns to Gem Year the separate rate of 55.16 percent, the same rate the other separate rate respondents received in the Final Results.<sup>20</sup>

### **III. COMMENTS FROM INTERESTED PARTIES**

On November 27, 2012, Hubbell and Vulcan filed comments on the Department's Draft Remand Results. Hubbell's comments, filed on behalf of itself and Gem Year,<sup>21</sup> did not object substantively to the Draft Remand Results, but instead focused upon one issue: the Department's use of the words "under respectful protest" in the application of separate rate status to Gem Year

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<sup>16</sup> See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588, 20589 (May 6, 1991) ("Sparklers").

<sup>17</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585, 22586-87 (May 2, 1994) ("Silicon Carbide").

<sup>18</sup> See Gem Year's August 3, 2010, submission, at 8-12.

<sup>19</sup> Id., at 13-22.

<sup>20</sup> See Final Results, 76 FR at 68402-03.

<sup>21</sup> According to Hubbell, Gem Year is in "full" agreement with Hubbell's comments. See Letter from Hubbell to the Department, regarding "Comments on Draft Remand Determination in Certain Steel Threaded Rod from the People's Republic of China" (November 27, 2012) ("Hubbell Comments") at 1, n.1.

in the Draft Remand Results.<sup>22</sup> Vulcan indicated agreement with the Draft Remand Results.<sup>23</sup>

We address Hubbell's issue below.

*1. The Department's Use of "Respectful Protest"*

Hubbell offered no substantive objection to the Draft Remand Results. However, Hubbell noted that it was unclear what the Department intends by its statement "under respectful protest." Hubbell indicated that if the Department intends that all litigation, including any appeal, is resolved by the proposed separate rate, then Hubbell and Gem Year agree with the separate rate assignment. However, if the Department's reference to "under respectful protest" means that the Department intends to appeal the decision, then Hubbell and Gem Year do not agree with the draft remand results. In that case, Hubbell and Gem Year state that the Department should proceed in accordance with the CIT's instructions.<sup>24</sup>

**Department's Position**

Regarding Hubbell's stated confusion about the meaning of the phrase "under respectful protest," the Department directs interested parties to the decision of the Court of Appeals for the Federal Circuit in Viraj.<sup>25</sup>

Having received no comments on the substance of the Draft Remand Results, the Department has made no changes for these final results of redetermination. Accordingly, the Department assigns to Gem Year the separate rate of 55.16%, the same rate the other separate rate respondents received in the Final Results.<sup>26</sup>

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<sup>22</sup> Id. at 2.

<sup>23</sup> See Letter from Vulcan to the Department, regarding "Draft Results of Redetermination — Final Results of the First Antidumping Duty Administrative Review: Certain Steel Threaded Rod from the People's Republic of China — Comments of Vulcan Threaded Products, Inc." (November 27, 2012) at 5.

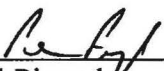
<sup>24</sup> Hubbell Comments at 2.

<sup>25</sup> See Viraj, 343 F.3d at 1375-76.

<sup>26</sup> See Final Results, 76 FR at 68402-03.

#### IV. RESULTS OF REDETERMINATION

Pursuant to the Court's order and based on the analysis of the data available on the record, the Department finds that Gem Year is eligible for a separate rate because of the demonstrated absence of de jure and de facto government control over Gem Year's export activities. Accordingly, Gem Year is assigned the separate rate of 55.16%.

  
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Paul Piquado  
Assistant Secretary  
for Import Administration

17 DECEMBER 2012  
Date