

**GPX International Tire Corporation et al. v. United States, Consol. Court No. 08-00285**  
**Slip Op. 13-2 (January 7, 2013)**

**FINAL RESULTS OF REDETERMINATION PURSUANT TO REMAND**

**SUMMARY**

The Department of Commerce (the Department) has prepared these final 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. 13-2 (January 7, 2013) (GPX VII). 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 Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40480 (July 15, 2008) (Final CVD Determination), and the accompanying Issues and Decision Memorandum.

In GPX VII, the Court remanded the following aspects of the Final CVD Determination: (1) The Department's determination that the asset sale by which Hebei Starbright Tire Co., Ltd. (Starbright) acquired the assets of Hebei Tire Co. Ltd. (Hebei Tire) was not made at arm's length; (2) the Department's determination that this asset sale was not made for fair market value (FMV); (3) the Department's decision not to quantify the value paid by Starbright for the assets of Hebei Tire; (4) the Department's use of an inflation adjustment in calculating the benefit to respondents from government-provided loans; and (5) the Department's finding of debt forgiveness to Tianjin United Tire & Rubber International Co. Ltd. (TUTRIC) and rejection of certain debt transfer agreements from the record in an earlier remand.

As stated in the relevant sections below, the Department disagrees with certain aspects of the Court's opinion in GPX VII. Nevertheless, we are complying with the Court's order, respectfully under protest, and addressing all of these issues on remand. In this remand

redetermination, we have reconsidered the basis for determining the 2006 asset sale from Hebei Tire to Starbright was not at arm's length or at FMV. After reviewing the facts of that transaction gathered in the original investigation, we are maintaining our conclusion that the sale was not at arm's length or at FMV. We have also reconsidered our determination that certain loans to TUTRIC were forgiven. After reviewing information submitted by TUTRIC during this remand and an earlier remand we are maintaining our conclusion that the debt was forgiven. Per the Court's order, we have offset the amount of the forgiveness by the amount TUTRIC paid to Avenue Asia, the ultimate holder of the debt.

## **BACKGROUND**

In the Final CVD Determination, the Department analyzed a 2006 asset sale from Hebei Tire to Starbright to determine whether or not prior subsidies granted to Hebei Tire were extinguished by virtue of this asset sale. See Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Certain New Pneumatic Off-the-Road Tires (OTR Tires) from the People's Republic of China (July 7, 2008) (Decision Memorandum) at Comments F.1-F.13. In so doing, the Department applied its change-in-ownership (CIO) methodology as set forth in Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125 (June 23, 2003) (Final Modification). This methodology begins with the recognition, codified in the Department's regulations at 19 CFR 351.524, that non-recurring subsidies benefit a recipient over a period of time (i.e., the allocation period) normally corresponding to the average useful life of the recipient's assets. However, if there is a CIO in the recipient during the allocation period, an interested party can rebut the presumption that the subsidies continue to benefit the new owner by showing that the prior owner sold all or substantially all of the company or its assets, retaining no control of the

company or its assets, and that the sale was an arm's-length transaction for FMV. Final Modification, 68 FR at 37127. If the record evidence demonstrates that all or substantially all of the company or its assets were sold in the CIO, and the seller retained no control of the company or its assets, and the CIO was at arm's length for FMV, the Department presumes that any pre-sale subsidies to the prior owner are extinguished in their entirety and, therefore, no longer countervailable. Id. If the record evidence does not demonstrate that these conditions with respect to the CIO existed, then the Department will find that the unamortized amount of any pre-sale subsidy benefit continues to be countervailable. Id.

The Department determined that the Hebei Tire-Starbright transaction was not an arm's-length transaction for two reasons. First, we found that the owners/employees of Hebei Tire expected to become employees of Starbright after the transaction. See Decision Memorandum at Comment F.4. In effect, they were on both sides of the transaction. Second, we found that the actions of Hebei Tire's chairman during the auction process, when he approached the auction house and urged it to accept the price he had settled upon with Starbright, essentially meant that the chairman was representing both Hebei Tire and Starbright. See id. In reviewing these two findings, the Court accepted that the role of the owners/employees in the transaction "did create some conflict between profit maximization and job security" and that the Department's analysis of their role "may fall into the category of what the courts have considered reasonable," but that our analysis of the chairman's actions was "distorted" and "flawed." GPX VII at 46-47. Therefore, it remanded for the Department to "re-weigh the evidence related to the arm's-length nature of the sale." Id. at 47.

The Department also found that the 2006 asset sale was not made for FMV. We found that Hebei Tire failed to create a competitive bidding process for its assets and that the asset

appraisals/valuations commissioned by the parties took place too late to have been a factor in the price negotiations. See Decision Memorandum at Comment F.5. The Court remanded our FMV finding. Specifically, the Court found that we should not have disregarded the findings in the asset valuations, and it stated that “though the timing of the appraisals could be a factor for the Department to consider in weighing the probity of the appraisals and the impact of the appraisals on the negotiated price, the Department may not unreasonably disregard important, relevant evidence of FMV, such as the outside valuations, solely because it is unclear what the role was of the particular valuations.” GPX VII at 49. Accordingly, the Court directed us to reconsider the relevant evidence concerning FMV.

With respect to the Hebei Tire-Starbright asset sale, we also found in the Final CVD Determination that the continuing benefit amount to Starbright should not be reduced or offset by the amount it paid for the assets. See Decision Memorandum at Comment F.8. The Court remanded this finding, stating that “it appears unreasonable for Commerce to argue that it is able to create a surrogate benchmark to calculate the level of benefit for all other types of subsidies in China and yet does not even need to attempt to do so here.” GPX VII at 50. The Court directed the Department to “provide a credible explanation for, or abandon, the apparent disconnect between its limited ability to undertake this analysis for the benefit calculation in the change in ownership context and the requirement of the same analysis for other subsidies under 19 U.S.C. § 1677(5)(E).” Id.

In the Final CVD Determination, the Department also countervailed government-provided loans to the respondent companies. See Decision Memorandum at 13-15. In calculating the benefit from these government-provided loans, we compared the interest rates on the loans to a benchmark interest rate. See id. at 7-9. We based the benchmark rate on the

interest rates in various market economy countries at levels of economic development similar to the People’s Republic of China (China). Id. at 8. We adjusted both the loan rates and the benchmark rate to account for inflation, as a proxy for an adjustment for exchange rate expectations, which could not be calculated. Id. at Comment E.4. The Court, however, remanded this determination, finding that the Department “did not explain the connection between {the inflation adjustment and the exchange rate adjustment} within the context of bank interest rate policies in China.” GPX VII at 54. The Court directed the Department to “explain why it uses a currency expectation adjustment for comparing domestic interest rates, why an inflation adjustment is a suitable proxy for a currency expectation adjustment, and whether the proposed adjustment by the Intervenor Defendants is essentially an attempt to countervail against China’s distorted inflation rate or a legitimate attempt to avoid a distorted benefit calculation.” Id. at 55.

Finally, in the Final CVD Determination, the Department applied the facts available, with an adverse inference (i.e., adverse facts available, or AFA), with respect to forgiveness of debt owed by TUTRIC to the Government of China (GOC). See Decision Memorandum at 15-18. TUTRIC had received loans from the Bank of China (BOC), a state-owned bank. TUTRIC did not repay the loans when it was supposed to do so, in 2004, and the BOC subsequently transferred the loans to Cinda Asset Management Corp. (Cinda), which then transferred them to Avenue Capital Group, Inc. (Avenue Asia). See id. During the investigation, the Department asked TUTRIC and the GOC for the transfer agreements between these companies, to determine whether debt was forgiven and how much may have been forgiven. See id. at 16-17. Neither party provided the agreements. Accordingly, as AFA, we determined that TUTRIC received countervailable debt forgiveness in the amount of the forgiveness. See id. at 17. Subsequently,

during the course of the first remand proceeding in this litigation, TUTRIC attempted to provide a transfer agreement in response to the Department's questions concerning a separate issue. We rejected the document as untimely submitted.

In GPX VII, the Court remanded our determination to rely upon AFA in finding that TUTRIC received countervailable debt forgiveness. GPX VII at 55-60. The Court found that the Department was obligated to take into account the document submitted by TUTRIC during the first remand proceeding. Id. at 59-60. The Court directed the Department to consider the document and the effect it had on the amount of TUTRIC's debt forgiveness. Id. at 60. As a corollary, the Court also directed the Department to measure any benefit received by accounting for a partial repayment by TUTRIC. Id. at 60-61. This alleged repayment was rendered irrelevant by our original resort to AFA, but the Court noted that, as a result of our reconsidering the application of AFA to the debt forgiveness, the partial repayment might become relevant again. Id.

The Court issued GPX VII on January 7, 2013. Subsequently, on January 11, 2013, we issued a letter to TUTRIC requesting that it resubmit information it had submitted in an earlier remand that the Department had rejected as untimely. On January 16, 2013, TUTRIC submitted the information: A debt transfer agreement between the BOC and Cinda transferring the creditor's rights for the BOC loans of TUTRIC and Dolphin Group (TUTRIC's parent) to Cinda. On January 17, 2013, TUTRIC submitted additional information regarding the same transaction and the eventual transfer of the debt to Avenue Asia, a U.S.-based investment bank. On March 18, 2013, we placed information on the record concerning the valuation of assets in China and the theoretical relationship between inflation and exchange rates. See Memorandum to the File, "Placing Documents on the Record; New Pneumatic Off-The-Road Tires from the People's

Republic of China, CIT Remand Proceeding GPX International Tire Corp. v. United States,  
Consol. Court No. 08-00285, Slip Op. 13-2 (January 7, 2013),” March 18, 2013.

On March 26, 2013, we issued Draft Results of Redetermination Pursuant to Remand (Draft Remand Results). On April 1, 2013, we received comments from the GOC, GPX International Tire Corp. (GPX), and Starbright jointly. That same day we also received comments from TUTRIC and Titan Tire Corporation (Titan). After reviewing the comments submitted, addressed below, we have determined not to alter the conclusions of our Draft Remand Results. As a result, the analyses and decisions set forth in the Draft Remand Results are reproduced below with only minor alterations.

## **FINAL ANALYSIS**

### ***Starbright Purchase of Hebei Tire Assets – Arm’s-Length Transaction***

As the Court notes, the Department “reasonably considered” the supplemental employment agreement, whereby Starbright agreed to retain a certain number of existing employees and to provide direct compensation to them as part of the sale. GPX VII at 46. The Court also appears to accept our finding that, because of the worker retention component of this agreement, Hebei Tire’s employee-shareholders played a dual role as stakeholders in both Hebei Tire and Starbright, effectively creating an affiliation between buyer and seller. The salient point with regard to the arm’s-length analysis is that this effective affiliation between buyer and seller that arose from the worker retention agreement negated a condition necessary for a transaction to be at arm’s length, as defined in the Statement of Administrative Action (SAA),<sup>1</sup> namely that the transaction be “negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction

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<sup>1</sup> H.R. Doc. 103-316, 103d Cong., 2d Sess. (1994) at 258.

had been negotiated between unrelated parties.” See Final Modification, 68 FR at 37127 and Decision Memorandum at Comment 4. Thus, the worker retention agreement gave rise to a conjoining of interests, resulting in an outcome different from what one would normally have expected to have occurred absent the affiliation between the parties involved.<sup>2</sup> This is directly contrary to the SAA definition of an arm’s-length transaction that forms the basis for the Department’s arm’s-length analysis.

The Court faulted the Department’s additional finding that the arm’s-length nature of the transaction was “also brought into doubt by the actions of Hebei Tire’s chairman,” whose contact with the auction house regarding the pre-negotiated price for the assets meant he was “in effect representing both buyer and seller simultaneously.” According to the Court, in making this finding, the Department had “adopted a distorted view” of the chairman’s actions, failing to point to evidence that he “somehow acted contrary to Hebei Tire’s interest.” GPX VII at 46-47. Hence, the Court ordered the Department to “re-weigh the evidence related to the arm’s-length nature of the sale.” GPX VII at 47.

In light of the Court’s order, we have reconsidered the extent to which the chairman’s actions should weigh in the Department’s finding. In so doing, we have addressed certain points made by the Court in this regard: (1) that the chairman’s communication with the auction house to set a reserve price was “consistent with auction house rules,” and (2) that the Department failed to point to any evidence that, in approaching the auction house, “the chairman somehow acted contrary to Hebei Tire’s interest in securing a winning bid.” GPX VII at 46-47.

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<sup>2</sup> While the record does not include clear evidence of what would have occurred under the counterfactual scenario of the employee-shareholders not being parties to both sides of the transaction, it is reasonable to conclude that under such a scenario there would have been little if any incentive for Hebei Tire to agree to such an employee retention and payout provision.



Regarding the first point, the fact that the chairman's actions were within the auction house rules does not necessarily mean the transaction was at arm's length; there is no requirement under the Final Modification that we find some violation of auction rules in order to determine that an action has breached the wall between buyer and seller. Thus, while the chairman's communication of a reserve price to the auction house violated no rules, the salient fact for our analysis is that the reserve price being communicated by the chairman was not an independent valuation of the true market value of Hebei Tire, but rather a pre-arranged price that had been considered acceptable to Starbright, *i.e.*, a price that embodied the conjoined interests of buyer and seller.<sup>3</sup> As such, the chairman was representing the interests of both buyer and seller in a manner that undermines the general purpose of an open auction process. As with the worker retention agreement, this dual role is demonstrably contrary to the SAA's arm's-length transaction definition on which our analysis is based.

With regard to the second point, similarly, the chairman need not have acted "contrary" to Hebei Tire's interest in order for his actions to cast doubt on the arm's-length nature of the transaction; rather, the germane fact is that he was acting in the common interest of both buyer and seller, thus again negating the conditions necessary to an arm's length transaction. In light of this reconsideration, the Department maintains its finding that the actions of the chairman provided further support for the Department's determination that the 2006 asset sale was not conducted at arm's length within the meaning of the Final Modification and the SAA.

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<sup>3</sup> "Mr. Han told the auction house that he had reached an agreement with GPX to sell the equipment for {renminbi} RMB [ ] million. He also told the auction house that this would be the most GPX would be willing to pay, and that it was unlikely there would be any other bidders. Thus, according to Mr. Han, he urged the auction house to accept GPX's bid at a second auction." See Memorandum to Thomas Gilgunn, "Verification of the Questionnaire Responses Submitted by Hebei Starbright Tire Co., Ltd. (Starbright)," May 14, 2008 (Starbright Verification Report) at 11. He did so because: "{H}e did not want to take the chance that the price floor might be above the GPX bid." *Id.*

Finally, the Department emphasizes that for prior subsidies to be extinguished by a CIO, among other requirements, the CIO must be demonstrated to have been at both arm's length and for FMV. See Final Modification, 68 FR at 37127, 37130. See also Allegheny Ludlum Corp. v. United States, 367 F.3d 1339, 1349 (Fed. Cir. 2004) (Allegheny I) (rejecting an argument that an arm's-length transaction necessarily occurs at FMV and stating that "a transaction may occur at arm's length without also involving fair market value"). Given that both are necessary conditions for finding subsidy extinguishment and given that, as discussed below, the assets of Hebei Tire were not sold at FMV, we find that the prior subsidies continued to be countervailable after Hebei Tire's assets were purchased by Starbright, regardless of the outcome of the arm's-length analysis.

#### ***Starbright Purchase of Hebei Tire Assets – Fair Market Value***

##### **Role of Appraisals and Timing of Appraisals under the Final Modification**

The Court has ordered the Department to examine the veracity of the two sets of appraisals on the record covering Hebei Tire's assets. The Court concluded we could not disregard these appraisals "solely because it is unclear what the role was of the particular valuations." GPX VII at 49. Pursuant to the Court's instructions, we have examined the veracity of the appraisals below. Before doing so, however, the Department wishes to clarify its view of the role of asset appraisals in its analysis, the significance of timing, and the difficulties involved in second-guessing asset appraisals.

Under the Final Modification, the Department considers asset appraisals to be an important indicator of whether the seller acted in a manner consistent with that expected of a normal, commercial seller. Specifically, the commission of such appraisals by the seller at a point in time in the CIO process that could meaningfully inform the consideration of the terms

and price of the transaction normally indicates that the seller has undertaken a genuine effort to maximize its return on the investment, i.e., seek FMV for its assets. Thus the Department respectfully disagrees with the Court’s statement that “Commerce has explained that it will rarely look to external valuations as clear indicators of whether the transaction reflected FMV.” Id. at 48. While it is true that the Department does not necessarily consider the actual values quoted in independent studies as dispositive of FMV, the existence of “objective analysis” is the first criterion the Department identifies in the Final Modification as an indicator of whether the seller acted in a manner consistent with the practices of a private, commercial seller (i.e., an indicator of whether the seller sought FMV in the transaction). See Final Modification, 68 FR at 37127 and GPX VII at footnote 36. Thus, objective analyses, such as asset appraisals, are very significant under the “process analysis” approach the Court concludes is consistent with Delverde SrL v. United States, 202 F.3d 1360 (Fed. Cir. 2000), and Allegheny I. In our analysis, however, the greatest utility of the appraisals to our FMV analysis is not their “bottom line” price, which is often speculative and subjective in nature. The “bottom line” price will be taken into consideration by the seller in the context of its own assumptions regarding the scope and premises of the analysis and the broader market and industry. See Final Modification, 68 FR at 37131. Rather, consistent with our process-oriented approach, we look at the role of these appraisals in the CIO under investigation, including the seller’s reliance on the appraisals, as indications of the commercial motivation we might expect on the part of a profit-maximizing seller.

In the Hebei Tire sale, the seller obtained the appraisal very late in the process, after the agreement had already been signed, and only in order to comply with regulatory requirements.<sup>4</sup> The second appraisal was obtained by the buyer, which the Department does not consider to be probative evidence of the buyer's practices. Thus, in our view, neither of the appraisals are probative evidence that the seller took the necessary steps to maximize its return. Indeed, the lack of objective, timely (i.e., completed prior to agreement on the final transactions price) and complete appraisals are normally highly probative in determining that the transaction was not for FMV. See Final Modification, 68 FR at 37132.

In the Final Modification, in response to comments, the Department explained that it is generally not in a position to evaluate whether appraisals for enterprises result in correct numbers. This is not simply a resource issue. As was clearly stated in the Final Modification, 68 FR at 37131:

With regard to an objective or independent analysis, we disagree that a sales price at or above the value cited in such an analysis is necessarily a dispositive indicator that the sale was for fair market value, other aspects of the sales process notwithstanding. We do not believe that private, commercial sellers normally follow or adopt such analyses blindly without a fuller understanding of, *inter alia*, the assumptions and scope of the analyses and the broader context of other market indicators and industry studies.

As the Department further explained, analogizing to the related context of appraisals conducted in advance of government equity infusions:

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<sup>4</sup> The draft asset purchase agreement (APA) was prepared in [ ]. The sales value in the draft APA was not modified in the final APA. Hebei Tire (the seller) obtained its asset appraisal (in three parts) between March 22 and 25, 2006. The final APA was signed only a few days later on March 30, 2006. Negotiations, however, began in April 2005, more than a year before the appraisal. See Starbright Verification Report at 16-17.

We are well aware of the potential difficulties in using independent analyses, not least of which is the fact that independent experts often fundamentally disagree about the prospects of a given investment. In other instances, the objectivity of some studies is called into question. However, private investors are likewise usually faced with a similar variety of competing views and must exercise their own judgement with respect to the objectivity of information before them. When considering the suitability of a submitted study, we will seek to ensure the study is accurate and reliable, and exercise our own judgement with respect to a study's objectivity. Specifically, we will take into consideration the extent to which the study's premises and conclusions differ from those of other independent studies, accepted financial analysis principles, or market sentiment in general (e.g., industry-specific business publications or general industry market studies).

Final Modification, 68 FR at 37132. We also noted that “though such objective analysis can serve as one useful benchmark for the sales price and can provide useful information about whether the process the government pursued was consistent with that of a private, commercial seller, we must exercise caution in how we use such an analysis given that it is often speculative and subjective in nature.” Id. In other words, an independent analysis is one source of information among several that the seller will likely consider in determining the value of the factory. The seller interprets that analysis through its own subjective assumptions about the usefulness of the factory's assets, the future of markets, the macroeconomy, and numerous other factors. These subjective assumptions depend on the experience and expertise of those valuing the factory. The appraiser's report is just a starting point the bidder uses in forming its own expectations about the factory's earning potential.

One of the two appraisals at issue in this remand illustrates the above point well: “[ ].”

Starbright’s April 8, 2008 questionnaire response at Exhibit V-CVD-1 (Starbright’s Appraisal) at 7. What subjective assumptions might be added to the “general idea” provided by the appraisal is particularly important when it comes to a factory. Factories obviously are not commodity products, which are priced on a daily basis in competitive markets, incorporating the subjective views of numerous market participants. Moreover, factories are bundles of assets that have to be valued: land, buildings, numerous types of equipment,<sup>5</sup> labor forces and management that might come with the factory, goodwill that has been established with suppliers, customers, and labor, and intellectual property and other intangible assets. In this case, making the appraisal process even more difficult is the fact that Hebei Tire appears to have been mismanaged over the several years preceding the asset sale (if debt and debt forgiveness are any indication) and thus past experience could not indicate what the assets might generate in terms of future earnings if properly managed.

#### Starbright’s and Hebei Tire’s Appraisals<sup>6</sup>

Nevertheless, despite our view that the “bottom line” of an appraisal is not dispositive in determining whether the sale of a factory was at FMV, we find several indications in the two appraisals at issue indicating they likely produced inaccurate bottom line estimates of the value of Hebei Tire’s assets. The Court directed us to examine the veracity and validity of these appraisals, see GPX VII at 49, and therefore we examined them and have found several reasons to doubt their veracity and validity.

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<sup>5</sup> The appraisals discussed below indicate that there are [ ] pieces of equipment (or “sets” of equipment) at issue (depending on which appraisal one chooses to believe).

<sup>6</sup> These are also referred to as the [ ] and the [ ] appraisals, respectively.

Starbright's Appraisal

As an initial point, we note that in the FMV analysis under our methodology, we normally look primarily at valuation studies commissioned by the seller, as our focus is the seller's actions; thus, we would not assign the same probative value to appraisal reports commissioned by a buyer.<sup>7</sup> Nevertheless, to comply with the Court's directions, we have assessed the appraisal report commissioned by Starbright on its merits.

- The title of the appraisal, along with several notes in the appraisal, indicates it is for the “[ ]” assets of Hebei Tire. As the Department concluded in the Decision Memorandum, Starbright purchased substantially all the assets of Hebei Tire. In fact, as noted above, what was left was essentially only a shell intended to wrap up the liquidation. See Starbright Verification Report at 12 (noting the only long-term asset left on Hebei Tire's books after the asset sale was a certain tract of land). Therefore, the appraisal appears incomplete and the Department does not know what portion of the assets is not accounted for.
- As noted above, the appraisal states that its objective is only to obtain [ ] of the value of the assets. (This is not necessarily a problem specific to this appraisal. As discussed above, appraisals typically are just a part of the pricing process, not the “be all and end all” when it comes to setting the price of assets or factories.)
- The appraisal includes several notes regarding the appraisal's limitations (“Explanation of Specific Issues”), including note 13: [ ]

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<sup>7</sup> As noted, the Department's process-oriented approach focuses on whether the seller “acted in a manner consistent with the normal sales practices of private, commercial sellers in that country.” See Final Modification, 68 FR at 37127. Thus, because appraisals commissioned by the buyer do not tell us anything about the seller's actions and practices, they are less probative under the process-oriented analysis. See also Final Modification, 68 FR at 37131 (the Department's response to comments received regarding “objective analysis”).

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(While this appraisal indicates it reviewed [ ] pieces of equipment, Hebei Tire's Appraisal (see Starbright's February 6, 2008 questionnaire response at Exhibit SSCVD-16), discussed below, indicates it reviewed [ ] "sets" of equipment.) This statement reinforces the conclusion above that the appraisal is incomplete.

- As explained in the Decision Memorandum, much of Hebei Tire's equipment was mortgaged to state-owned banks. These mortgages secured debt of Hebei Tire that was several years in arrears. The equipment was in danger of being foreclosed and its status was not settled until the chairman took action shortly before the sale to Starbright was finalized (which was after this appraisal, commissioned by Starbright, took place). While [

], it is

unclear from the appraisal whether this equipment was taken into consideration by the appraiser.

- The appraisal explains that it considers [ ], but the value of the [ ] it lists is precisely equal to the value of the [ ] it lists, indicating that the appraisal took no other [ ] into consideration.

However, the record indicates that tire factories require such other [

] in order to operate. See Starbright Verification Report at 2.

- The appraisal relies on information provided by Hebei Tire to the appraisers. Starbright's Appraisal at 11. However, page one of the O'Melveny & Myers due diligence report notes: "[



].” Starbright’s April 8, 2008 questionnaire response at Exhibit V-CVD-1 (due diligence report). As another example of Hebei Tire’s record keeping, “Hebei Tire explained that it had no long-term loans, contrary to what is indicated in its balance sheet. Hebei Tire officials explained that they had simply booked a portion of short-term loans as long-term loans for the sake of appearances.” See Starbright Verification Report at 19. The appraisal itself notes: “[

].” Starbright’s Appraisal at 11. While this might be a boilerplate statement, it makes clear that the appraisal is based on the honesty and accurate record keeping of Hebei Tire; it is not an audit.

#### Hebei Tire’s Appraisal

- As discussed above, this appraisal was commissioned and conducted at the last minute as part of Hebei Tire’s efforts to comply with regulations governing asset sales. Besides making the appraisal unhelpful under the Department’s process-oriented analysis, it brings into question the veracity of the appraisal. It seems likely the appraisal was “results oriented,” an appraisal designed to result in the already signed sales agreement being approved by local authorities. The lack of information provided with the appraisal supports this conclusion. Hebei Tire’s Appraisal contains mainly boilerplate statements assuring the reader that the appraisal was conducted in a manner consistent with regulations and standards, a list of the equipment reviewed and its replacement cost, a description of the land reviewed and of the city at large, and a list of the buildings reviewed along with their estimated values.

- The duration of the appraisal supports the conclusion that it was done in a cursory manner. The [ ] pieces or sets of equipment were appraised in [ ] and the land in [ ]. The time required to appraise the buildings is not noted but, assuming it was done in about the same amount of time, the appraiser managed to value over [ ].
- During verification, Hebei Tire officials explained that this appraisal actually consists of three different appraisals: one for equipment, one for buildings, and one for land.<sup>8</sup> The officials explained that the three appraisals were each conducted by a separate local firm specializing in the type of assets examined. See Starbright Verification Report at 13. Thus no single appraiser considered the value of the assets in toto. In fact, it does not appear that any of the appraisers could have done so. When we asked if the local appraiser that had valued the equipment had experience valuing tire equipment, the Hebei Tire officials responded that “there was only one tire manufacturer in Xingtai,” i.e., there were no other tire companies in town with which the local appraisers could have obtained experience in valuing the assets of a tire factory. Id.
- Similar to Starbright’s Appraisal discussed above, Hebei Tire’s equipment and land appraisals note at the outset that they are conditioned on Hebei Tire’s provision of “[ ]” information.

To the extent that these faults might appear to be curable through requests for additional information, the Department notes that it requested that all appraisals, studies, reports, and due diligence reports concerning Starbright’s purchase of Hebei Tire be submitted on several

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<sup>8</sup> The equipment is appraised by [ ]. The land is appraised by [ ]. The buildings are appraised by [ ]. For simplicity, the Department refers to all three appraisals together as the “Hebei Tire Appraisal.”

occasions. See Starbright’s August 8, 2008 questionnaire response at 4-7. Starbright assured the Department that there was no additional information responsive to this request. Id.

#### Other Indications that the Sale Was Not For Fair Market Value

Because the Court remanded our determination “for reconsideration of all of the relevant evidence on both the arm’s-length nature of the sale and FMV,” the Department hereby emphasizes additional facts from the investigation record that indicate the transaction was not at FMV.

As the Court concluded, the Department “reasonably considered” the supplemental employment agreement, whereby Starbright agreed to retain a certain number of existing employees and to provide direct compensation to them as part of the sale. GPX VII at 46. While the Court reached this conclusion in the course of examining our arm’s-length analysis, finding that the agreement created “some conflict between profit maximization and job security such that Hebei Tire may not have been as likely to negotiate for the highest price possible,” the Department believes this agreement is exactly the type of non-commercial consideration contemplated by the Final Modification that leads to a transaction at less than FMV. The concern is not simply that the sales price will be lowered by the expense to the buyer of the supplemental agreement (i.e., for each dollar Starbright pays under the supplemental agreement, the price of the factory is lowered by a dollar). The greater concern is that the seller, in its eagerness to settle its problems with its employees, agrees to a deal that is inadequate overall. Regardless of whether Hebei Tire was state-owned at the time of the sales agreement with Starbright, the record demonstrates that the transaction was being conducted in furtherance of state objectives. The chairman of Hebei Tire thus appears to have effectively been acting on

behalf of the state to achieve these objectives – the settlement of the employee issues being chief among them – not to maximize profit.<sup>9</sup>

The employee issues included the following:

- *Unpaid compensation amounting to [ ] RMB (approximately [ ] at the time) owed to the employees of Hebei Tire. These funds could not have been paid if Hebei Tire had been liquidated without the agreement because [ ]. See due diligence report, at appendix 2, page 5. The employees, who were also the majority shareholders at the time of the sale, thus had no incentive to maximize the sales price because they would receive none of the proceeds from the sale. Their incentive was simply to have their past due compensation paid. At verification, the GOC confirmed that the [ ] RMB in unpaid compensation was owed to the employees by the state as part of the “cost of reform” incurred during the GOC’s privatization of Hebei Tire in 2005: “{Provincial government} officials stated that both the {municipal} government and Hebei Tire would be responsible for any shortfall because both entities were part of the state at the time this compensation was incurred (2000).” See Memorandum to Thomas Gilgunn, “Meetings with the Government of Hebei Province and Xingtai Municipality Regarding Hebei Starbright Tire Co., Ltd. (Starbright) and Hebei Tire Co., Ltd. (Hebei Tire),” May 13, 2008 (Provincial-Municipal Verification Report) at 6 and 11.*
- *An additional [ ] RMB (approximately [ ] at the time) in unpaid employee benefits (pension fund contributions). While [ ] percent of these unpaid*

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<sup>9</sup> It is not in dispute that the chairman was the head of Hebei Tire when it was, by all regards, a state-owned enterprise (SOE) and was still the chairman of another SOE at the time of Hebei Tire’s asset sale to Starbright. He was therefore a state employee at the time of the transaction.

benefits were paid off before the transaction, the remaining [ ] percent was paid off only after Starbright began its installment payments to Hebei Tire.<sup>10</sup> See Provincial-Municipal Verification Report at 11 indicating that these unpaid pension fund contributions had been incurred, at least in part, before Hebei Tire’s 2005 restructuring, in which the GOC sought to divest itself of its interests in Hebei Tire.

This information thus reasonably indicates that the chairman was in effect cleaning up the state’s business by selling Hebei Tire’s assets to Starbright. While the Department cannot conclude definitively that such obligations precipitated a “fire sale,” they suggest a very strong motive for accepting less than FMV and for simply wanting to be “done with it.”<sup>11</sup> They also indicate the type of situation that can sometimes lead to inaccurate, “results-oriented” asset appraisals according to a World Bank report published at the time of the asset sale:

{China’s} valuation industry is relatively young and struggling to overcome a number of problems. Local valuation firms often started life as specialist accountancy departments of central government ministries or regional administrations. There are layers of administration overseeing the industry but no uniform system of qualifications. . . . In other common situations, their local license has been granted by a government authority that is also connected to the state assets being valued. As a result, a proportion of agencies do not act professionally and are influenced by local governments or gaizhi firms who make requests for a favorable valuation. Rules for professional ethics and conduct are

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<sup>10</sup> Starbright purchased substantially all the assets of Hebei Tire, but a shell was left for purposes of winding up the company’s liquidation.

<sup>11</sup> “{A}ccording to {GOC} officials, the Hebei Tire employees pushed Hebei Tire to complete the restructuring process. In response to the employee pressure, Hebei Tire notified the {local government} of its desire to complete the {gaizhi} process.” Provincial-Municipal Verification Report at 6-7.

evolving.<sup>12</sup> . . . Several structural features of the Chinese economy make the task of valuation difficult and restrict the applicability of some of the standard methods and techniques. . . . Imported equipment also presents a problem to local valuers, since they rarely bear in mind the regional pricing mechanisms of multinationals, differing exchange rates, and contrary inflation rates. . . . China’s underdeveloped and distorted capital markets provide insufficient and unreliable information to allow sophisticated methods of asset valuation. . . . Some aspects of this environment – such as the fast-growing economy, the underdeveloped capital markets, and the young and immature accounting profession—tend to increase uncertainty and therefore make it more difficult to agree on a “fair” price. . . . {T}here are powerful groups that benefit from undervaluation of state assets.<sup>13</sup> Anecdotal evidence suggest that asset appraisals often undervalued the assets to make them cheaper to buy. Although rules exist for registering and verifying the valuation outcomes, many cities had no effective mechanism of supervision over the valuation of assets. . . . Irregularities have been associated with situations involving potential conflicts of interest, such as SOE managers choosing valuers, the practice of giving discounts to appraised value, and insider privatization, particularly MBOs. . . . It is common for buyers to receive state assets at a discounted price. . . . It appears that government discounts on the net assets of gaizhi SOEs result in the loss of state assets, but local governments have

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<sup>12</sup> “Gaizhi” means reform. A gaizhi firm is one that is an SOE that is undergoing privatization. While the Department does not consider Hebei Tire to have been state owned at the time of the sales agreement with Starbright, it is clear from the record, discussed below, that the transaction was being conducted in furtherance of state objectives. In addition, GOC officials were clear that the sale to Starbright was the final stage of Hebei Tire’s “reform” process (i.e., the gaizhi process). See Provincial-Municipal Verification Report at 6-8.

<sup>13</sup> The book notes that there are also incentives to overvalue.

to weigh these losses against other objectives, such as the need to meet their quotas for gaizhi or to maintain employment in the locality. . . . {In providing discounts, local} governments often took into consideration the buyer's ability to upgrade technology and provide employment.<sup>14</sup>

The state's interests in the asset sale were not solely limited to these employee concerns. At the time of the asset sale to Starbright, Hebei Tire was partially owned by a local village. During verification, the village government explained that it had provided Hebei Tire with land in exchange for assurances that a minimum number of village residents would be employed by the factory. See Starbright Verification Report at 6. The village also expected the factory to [ ]. See Starbright's April 8, 2008 questionnaire response at Exhibit V-CVD-1. Thus the village's interest in the factory from its inception was not purely that of a typical commercial investor. This divergence of the village's interest between profit, employment, and other village economic interests continued throughout the sale to Starbright, at which time the village became [

]. See Starbright's

February 6, 2008 submission at SSCVD-19.<sup>15</sup> Therefore, another potential conflict was created between maximizing the sales value of Hebei Tire's assets and maintaining other village interests.

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<sup>14</sup> China's Ownership Transformation: Process, Outcomes, Prospects, Stoyan Tenev et al. (The International Finance Corporation and The International Bank for Reconstruction and Development, The World Bank, 2005) at 67-75, placed on the record of this remand proceeding on March 18, 2013. The willingness of appraisers in China to bend results to serve certain outcomes was admitted at verification: "Starbright officials then disputed the accuracy of any appraisals that might be prepared for lending purposes, such as whatever appraisal might have been relied upon by {Hebei Tire's bank}. . . . {L}oan officers may be willing to accept (or even demand) any appraisal report that estimates collateral value as being at least twice the amount of the desired loan, no matter how inflated and inaccurate the appraisal report may be, in order to persuade their superiors to sign off on the loan." Starbright Verification Report at 11.

<sup>15</sup> It is debatable whether the participation of the village in the asset sale is an indication that the sale was not at arm's length. However, it nevertheless still gives rise to concern that the sale might not have been conducted to maximize profits at FMV.

For these reasons, we continue to find that the sale from Hebei Tire to Starbright was not made at FMV.

***Starbright Purchase of Hebei Tire Assets – Offset for Purchase Price***

The Court instructs the Department “to provide a credible explanation for, or abandon, the apparent disconnect between its limited ability to {create a surrogate benchmark} for the benefit calculation in the change in ownership context and the requirement of the same analysis for other subsidies under 19 U.S.C. 1677(5)(E).” GPX VII at 50.

After examining this issue thoroughly, we find that there is no disconnect. In a CIO, the Department is not determining whether there is a new countervailable subsidy, and thus we are not calculating the benefit of a new countervailable subsidy. Rather, the CIO analysis simply seeks to determine whether the benefit allocation stream from prior countervailable subsidies (for which we have already conducted the entire analysis pursuant to sections 771(5)(B), (D) and (E) and 771(5A) of the Tariff Act of 1930, as amended (Act)) continues or not. There is no new benchmark analysis to perform because there is no new subsidy to analyze and calculate.<sup>16</sup> By contrast, when analyzing new subsidies, we determine whether there is a benefit pursuant to section 771(5)(E) of the Act, which generally requires identification of appropriate benchmarks. For example, if we are examining whether goods were provided for less than adequate remuneration (LTAR), the respondent benefits to the extent the value of the good exceeds the benchmark. In an analysis of a new subsidy, such as a good provided for LTAR, it is necessary to find a benchmark by which to measure the benefit from the subsidy; in a CIO analysis, the

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<sup>16</sup> If a CIO analysis were a question of new subsidies (*i.e.*, whether assets or a factory were provided at LTAR), that would suggest that the prior subsidies were necessarily extinguished as a result of a CIO—something that the Act clearly states is not required. See section 771(5)(F) of the Act. Moreover, a CIO cannot require an “offset” to the amount of a countervailable subsidy, because section 771(6) of the Act does not include payment for a company or its assets among the types of offsets to countervailable subsidies.



subsidy was already determined to have provided a benefit and the only question is whether the portion of that benefit that has not yet been allocated over time should continue to be allocated and countervailed or not. In the present case, the allocation period for non-recurring subsidies, pursuant to 19 CFR 351.524, is 14 years. See Decision Memorandum at 5. Therefore, the question in our CIO analysis is whether the benefits from the non-recurring subsidies Hebei Tire received continue to be countervailable for the remaining portion of those 14 years after Starbright bought Hebei Tire's assets. The Department previously determined that those non-recurring subsidies met the benefit requirement in section 771(5)(E) of the Act at the time of their bestowal upon Hebei Tire. Now we must determine whether the CIO extinguished those benefits—in their entirety or not at all. This issue, therefore, is not whether the CIO resulted in a new subsidy or a new benefit.

Regardless of the differences between a subsidy analysis, such as an LTAR analysis, and the CIO analysis, as explained in detail above, under the FMV analysis, estimating the value of a factory is not the same as estimating the value of a commodity subject to an LTAR allegation. We listed above the number of assets in a factory that must be valued: land, buildings, numerous types of equipment,<sup>17</sup> labor forces and management that might come with the factory, goodwill that has been established with suppliers, customers, and labor, and intellectual property and other intangible assets. Some of these assets, such as equipment, can be valued if they are traded on active, competitive capital markets. Market prices reflect the opinions of numerous individuals and companies regarding the value of assets. They reflect much more than the subject opinions of one or two individuals or companies. But even when active competitive capital markets exist,

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<sup>17</sup> The appraisals discussed above indicate that Hebei Tire's plant contained [ ] pieces of equipment (or "sets" of equipment), depending on which appraisal one chooses to believe.

one would need to inspect the assets to determine their age, quality, condition, etc. One would need to be an expert about such machinery to know how to determine quality and condition.

Other assets that comprise a factory, such as labor force and management, cannot be valued by reference to capital markets, and likely are thus much harder to value. To do so, one presumably would have to have some opportunity to meet with that labor force and management. One would have to know what questions to ask. An industry outsider, such as the Department, would not know what questions to ask the prospective management any more than it would know what to look for in evaluating the equipment.

Just as particular expertise and experience would be needed to value equipment, labor force, and management, it would also be necessary to value buildings,<sup>18</sup> intellectual property, relationships with supplier and customers (which, presumably the buyer intends to assume), etc. Making the appraisal process even more difficult in this case is the fact that Hebei Tire appears to have been mismanaged over the several years preceding the asset sale (if debt and debt forgiveness are any indication) and thus the factory's past experience would not indicate the assets' potential earnings if properly managed.

Even putting aside the difficulties of valuing the extensive number of assets of all different types, those values must be combined with very subjective assumptions about the possible uses of the assets, the future of the markets for the products to be produced and the inputs to be purchased, the financial market from which financing can be obtained when necessary, and the future of the overall macroeconomy (a Chinese tire factory might do business in multiple countries and continents). These subjective assumptions depend on the experience and expertise of those valuing the factory. For example, one bidder might assume that the

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<sup>18</sup> The record indicates Hebei Tire consisted of [ ] buildings.

market for that factory's products will experience a boom in the near future and thus might be willing to bid \$2,000,000. Another might expect the market to downturn and will only bid \$500,000. The bidders might also have different opinions about how the assets of the factory might be used in combination with each other or with the bidder's existing assets (the in toto value of the assets taken together as a factory), or the bidders might have different thoughts regarding entirely new uses for the factory's assets. An industry outsider, which is the Department's perspective when it comes to tire production, sales, and factory management, could not possibly guess which of the two bidders is relying on the better set of assumptions. Even a skilled, experienced independent appraiser is likely to be incapable of estimating what the value of the factory will be to the bidders themselves. The appraiser's report is just a starting point the bidders use in forming their own expectations about the factory's future earnings.

By contrast, in examining LTAR allegations, the Department must find benchmarks for goods such as hot-rolled steel, specific types of rubber (natural rubber and different grades of synthetic rubber), solar grade polysilicon, specific types of plastics (polyethylene, polypropylene, biaxially-oriented polypropylene), etc. These are fungible products that are traded countless times a day on markets throughout the world. The prices for these transactions are generally published on a daily or monthly basis. These published prices are the result of competition in very active markets. When Hebei Tire was sold, there was no competitive process and we have simply the opinions of two appraisals regarding the value of part of the assets at issue. Thus, the appraisals are not an adequate benchmark. Nor can the Department determine the value of a tire factory, as it can the value of a hot-rolled coil in an LTAR allegation, using, for example, [steelbenchmarker.com](http://steelbenchmarker.com). Accordingly, we do not believe there is a disconnect between the use of

a benchmark in examining an LTAR allegation and the inability to estimate the FMV of a tire factory.

***TUTRIC AFA***

The Department applied AFA in determining that loans from the BOC to TUTRIC were forgiven. While the BOC sold the loans to Cinda, and Cinda resold the loans to Avenue Asia, a U.S. investment bank, we determined we could not determine whether debt forgiveness had taken place way without being able to review the transfer agreements. We noted the agreements might contain provisions forgiving portions of the debt or in some way limiting the ability of the purchaser to collect on the debt. See Decision Memorandum at 16-17 and Comment E.6. The agreement placed on the record by TUTRIC on January 16, 2013 between the BOC and Cinda does nothing to relieve these concerns. In fact, it confirms that such ancillary agreements limiting what the buyer might collect could exist and are not on the record. Specifically, at paragraph 3, the BOC-Cinda agreement states:

[

]

See TUTRIC’s January 16, 2013 submission at Exhibit R-1, paragraph 3 of “Debt Transfer Agreement.”

By [ ] this paragraph appears to place Cinda in the shoes of the BOC in all respects, presumably requiring Cinda to honor all [

], restructuring agreements, and repayment agreements. There would be no reason to include this paragraph in the BOC-Cinda agreement unless such ancillary agreements existed. These ancillary agreements, however, are not on the record. As the Court recognizes, in GPX VII at 58, the GOC has refused to provide information concerning either the BOC-Cinda transfer or the Cinda-Avenue Asia transfer, citing the confidentiality of the parties involved. What information we have about the BOC-Cinda or Cinda-Avenue Asia transfers, which has been provided solely by TUTRIC, still has not provided the complete picture.

TUTRIC's second submission regarding the agreement between Cinda and Avenue Asia (i.e., the January 17, 2013 submission) does not complete the picture either.<sup>19</sup> That information, consisting of what appears to be affidavits from one TUTRIC official and one Cinda official, only attests to the sales value of the debt sold by Cinda to Avenue Asia. The affidavits do not tell us whether Avenue Asia purchased the debt with the same encumbrances that may have been attached to it when sold to Cinda.

Despite TUTRIC's submission of additional information in this remand proceeding, we continue to find application of AFA to be warranted in considering the issue of TUTRIC's debt forgiveness. Section 776(a) of the Act provides that the Department shall use facts otherwise available if, among other things, necessary information is not on the record or an interested party withholds information that has been requested by the Department. Consistent with our finding in the Final CVD Determination, we continue to find that necessary information with regard to the transfer of TUTRIC's debt from the BOC to Cinda and from Cinda to Avenue Asia is not on the record, and we continue to find that TUTRIC and the GOC withheld requested information

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<sup>19</sup> While we asked TUTRIC to submit only the BOC-Cinda agreement, we are using our discretion to reopen the record of this proceeding for the limited purpose of accepting this second submission.

regarding the transactions between the BOC and Cinda and between Cinda and Avenue Asia. See Decision Memorandum at 16-17 and Comment E.6. Despite our requests, the Department still has no way of determining whether the agreements in question might contain provisions forgiving portions of the debt or in some way limiting the ability of the purchaser to collect on the debt. In fact, the additional information provided by TUTRIC in this remand proceeding indicates the existence of additional agreements or provisions affecting such rights and liabilities of the parties to those transfers, which have not been provided by the GOC or TUTRIC. Because we also continue to find that neither the GOC nor TUTRIC cooperated to the best of its ability in response to the Department's requests for information, we continue to apply an adverse inference pursuant to section 776(b) of the Act that these loans to TUTRIC have been forgiven.

#### ***TUTRIC Subsidy Offset***

If the Department continues to find TUTRIC benefited from the forgiveness of the BOC loans, the Court's remand order clearly instructs the Department to measure the benefit from such debt forgiveness as the amount of the outstanding debt minus any payment by or on behalf of TUTRIC (by on behalf, we understand the Court to be referring to payments by Dolphin Group, TUTRIC's parent that was the nominal debtor). Record evidence indicates that Dolphin Group made a payment in the amount of [ ] RMB to Avenue Asia in partial satisfaction of the debt. See TUTRIC's November 27, 2007 questionnaire response at 10 and Exhibit SCVD-7. Therefore, we have revised the calculations from the final determination of the investigation by reducing the amount of the BOC debt forgiveness by the amount paid to Avenue Asia by TUTRIC/Dolphin Group. Accordingly, the ad valorem subsidy rate for debt forgiveness for TUTRIC changes from 6.14 percent to 3.22 percent and TUTRIC's overall subsidy rate changes

from 6.85 percent to 3.93 percent. See Memorandum to the File, “GPX VII, TUTRIC Calculation Memorandum,” March 26, 2013.

### ***Loan Benefit Calculation***

In the Decision Memorandum, the Department indicated that removing inflation and exchanging into a common currency both result in a comparable basis to measure the benefit:

Section 351.505(a)(2)(i) of our regulations states that in identifying a comparable commercial loan to use as a benchmark, the Department will consider, inter alia, the currency in which the loan is denominated. In this investigation, our benchmark is not denominated in any single currency, but instead is constructed of interest rates from numerous countries, while each of the government-provided loans is denominated in a single currency. The inflation adjustment allows the Department to address this issue. As we explained in CFS from the PRC, when the Department compares prices across countries, it normally converts those prices into a common currency because cross-currency price comparisons make no sense. See CFS from the PRC and IDM at Comment 10. In the case of interest rates, this involves adjusting for expectations about movements in the exchange rate between the currencies in question. However, such an adjustment is not feasible given the limited availability of relevant forward exchange rate data for the countries in the basket that underlie the benchmark. The Department can, however, adjust nominal interest rates for inflation and use a cross-country comparison of real interest rates for benefit calculation purposes. A cross-country comparison of real rates is a rough proxy for a comparison of exchange rate-adjusted nominal rates because of the general link between inflation and

(nominal) exchange rate expectations. The use of real rates is also valid because the benefit calculation should not reflect inflation expectations that differ across countries.

Decision Memorandum at Comment E.4. When the external benchmark was initially developed in the coated free sheet paper from China investigation, the Department explained that adjusting for inflation is necessary in order to compare the real cost of funds in China to the real cost of funds (a composite rate) in the benchmark countries:

In this benchmarking exercise, the Department is comparing the price of funds in China to the price of funds abroad to determine whether PRC CFS producers were conferred a benefit in their loans from the {state owned commercial banks}.

Normally, when comparing prices across countries, the Department converts these prices into a common currency. In this case, however, that is not possible: the benchmark rate is not specific to any given currency, being a composite of the available lending rates of all market economy lower-middle income countries. As a proxy for currency conversion, however, the Department will adjust for inflation. Adjusting for inflation allows the Department to base its loan benefit calculation on comparable interest rates... Accordingly, only an adjustment for inflation is necessary to allow for a comparison between the real cost of money in China and in the group of benchmark countries.<sup>20</sup>

The Court's directive requires the Department to explain why the inflation adjustment relied on in the investigation is a suitable proxy for a currency expectation adjustment. Before

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<sup>20</sup> See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007), and accompanying Issues and Decision Memorandum at Comment 10.



directly arriving at this link, it is important to consider the hypothetical cross-border interest rate context. Suppose the one-year nominal interest rate is 10% in Mexico and 5% in the United States. A direct comparison of these two interest rates yields a difference of 5%, but this difference has little meaning from an economic perspective because the two interest rates represent rates of return (or cost of funds from a borrower's perspective) in different currency units, *i.e.*, the 10% represents a pesos return on a pesos investment, and the 5% represents a dollar return on a dollar investment. Thus, a direct comparison of a pesos return with a dollar return is a comparison of apples and oranges.

Of course, the apple can be converted into an orange (and *vice versa*) through currency conversions that indicate the extent to which, say, the peso return is increased or reduced in dollar terms by movements in the peso-dollar exchange rate. In the above example, a depreciation of the peso *vis-à-vis* the dollar by 20% would wipe out the peso return and make the return on the peso investment negative in dollar terms.

Facing the potential for adverse currency movements, an investor in making the apples-to-apples comparison of returns -- the dollar return versus the dollar-equivalent peso return -- typically considers (1) the exchange rate prevailing at the time of the investment or loan and (2) the exchange rate expected to prevail when the investment return is realized at a future date.<sup>21</sup>

Forward exchange rates are the best market-based measure of expected rates, and when forward

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<sup>21</sup> International Monetary and Financial Economics, Daniels, Joseph P. and David D. Vanhoose, Third Edition (2005) (International Monetary and Financial Economics) at 113, placed on the record of this remand proceeding on March 18, 2013. The expected return, in domestic currency units, can be expressed as  $(1/S)(1+R^f) F$ , where S is the spot rate, F the expected future spot rate, and  $R^f$  is the nominal return on the foreign asset.

rates are available, the Department has used them.<sup>22</sup> However, when forward rates are not available, the Department has used spot rates.<sup>23</sup>

Exchange rate-based adjustments are not the only way to effect meaningful cross-border comparisons of interest rates denominated in different currencies. An alternative method is to rely on inflation-based adjustments, given the general relationship between inflation and currency movements.<sup>24</sup> Inflation, by definition, is essentially the devaluing of currency, a reduction in its purchasing power. When we look at national inflation rates in a two-country context, inflation is not just a reduction in the purchasing power of a national currency over goods and services, but over other (foreign) currencies as well. In the example above, when Mexico's inflation exceeds U.S. inflation, the purchasing power of the peso over the dollar falls, i.e., the pesos tends to weaken, or depreciate, against the dollar.<sup>25</sup> Given this general relationship between inflation and exchange rates, the inflation rate differential between the two countries can be used as a proxy for the extent of depreciation of the peso against the dollar.<sup>26</sup> In the two-country context, exchange-based adjustments and inflation adjustments are, basically, two-sides of the same coin.

In the investigation in question, inflation data was readily available for the basket of countries in the benchmark, but the relevant exchange rate data was not. Moreover, at the time, the China exchange rate was not considered a market-based price for antidumping duty purposes

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<sup>22</sup> See Certain Iron-Metal Castings From India: Preliminary Results of Countervailing Duty Administrative Review, 61 FR 64669 (December 6, 1996).

<sup>23</sup> See Final Affirmative Countervailing Duty Determination in the Countervailing Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Brazil, 67 FR 62128 (October 3, 2002), and accompanying Issues and Decision Memorandum at the section "Long-Term Benchmarks."

<sup>24</sup> International Monetary and Financial Economics at 59-65.

<sup>25</sup> This relationship between inflation and exchange rates can be expressed in general terms as  $(\pi^d - \pi^f) = (F - S)/S$ , where  $\pi^d - \pi^f$  is the difference between domestic ( $\pi^d$ ) and foreign inflation ( $\pi^f$ ) expectations, F is the expected future spot rate and (S) is the current spot rate. See International Monetary and Financial Economics at 151-152.

<sup>26</sup> This general relationship is described in economic texts as "the difference in expected rates of inflation is equal to the expected rate of depreciation or appreciation of the domestic currency relative to the foreign currency." See id.

and was therefore not used in our antidumping duty margin calculations, which would have made its use for countervailing duty benchmarking purposes problematic.<sup>27</sup> In addition, we note that the inflation-based adjustment is also much simpler to implement from an administrative perspective.

As the Court indicated, Titan proposed nominal interest rate comparison would significantly distort the benefit calculation. As Kellison notes, “Inflation represents loss of purchasing power over time. Lenders will therefore demand higher rates of interest than they otherwise would to compensate for the loss of value in their capital.”<sup>28</sup> Domestic inflation rates, therefore, have a “significant effect” on the level of domestic interest rates.<sup>29</sup> A lender facing high inflation in Mexico would require a higher rate of interest than a lender facing a lower rate of inflation in the United States. For example, suppose the only difference between these two hypothetical loans was the inflation mark-ups. Then, Titan’s benefit calculation would essentially amount to countervailing the relatively high inflation in Mexico. The Department’s benefit calculation, however, removes inflation so that (cross-country) inflation differentials are not reflected in the benefit calculation. Moreover, as explained above, removing inflation as a proxy for currency conversion places the two interest rates on a comparable basis as envisioned in 19 CFR 351.505(a)(2)(i).

Further, Titan’s alternative proposal to rely on the gross domestic price (GDP) deflator would, in effect, also artificially overstate the Department’s benefit calculation for similar reasons. To the extent that lenders and borrowers in China rely on “headline” inflation, that is,

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<sup>27</sup> See Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, and accompanying Issues and Decision Memorandum at Comment 10.

<sup>28</sup> The Theory of Interest, Kellison, Stephen G., Second Edition (1991) (The Theory of Interest) at 296-301, placed on the record of this remand proceeding on March 18, 2013.

<sup>29</sup> Id.

inflation measured by the consumer price index (CPI), when setting the price of credit, the Department should rely on CPI when determining the benefit for loans under investigation. Incorporating another measure of inflation, such as the GDP deflator, that lenders and borrowers in China did not directly observe, or consider, would introduce another fundamental distortion into the benefit calculation. In this instance, because the GDP deflator measured a larger inflation rate than CPI, this distortion has the effect of overstating the benefit. In addition, Titan provided no basis on this record that suggests lenders and borrowers in China, in general, rely on the GDP deflator when interest rates on loans are determined. The most common measure of inflation for most models, including the one used in the Department's benchmark methodology, relies on the CPI when calculating real interest rates.<sup>30</sup> The reason CPI is often referred to as "headline" inflation is precisely because it broadly affects the inflation expectations of businesses and consumers (and in turn their expectations regarding the price of credit) whereas the GDP deflator is better suited to the field of macroeconomics where economists are trying to track real changes in the production output for the economy.<sup>31</sup> Therefore, despite Titan's claims that the CPI may understate inflation because of China's calculation methodology, the Department maintains that it provides a reasonable means of adjusting for inflation.

For these reasons, the Department continues to believe an inflation adjustment is a suitable proxy in the context of a cross-currency interest rate comparison. Moreover, as explained, we believe Titan's proposed adjustment would artificially overstate the Department's benefit calculation.

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<sup>30</sup> Id.

<sup>31</sup> See International Monetary and Financial Economics at 332-337.

## **COMMENTS ON DRAFT REMAND RESULTS**

As noted above, we issued Draft Remand Results on March 26, 2013, and received joint comments on the draft from the GOC, GPX, and Starbright, on April 1, as well as from TUTRIC and Titan.

### ***1. Starbright Purchase of Hebei Tire Assets – Arm’s-Length Transaction***

#### *Arguments of the GOC, GPX, and Starbright*

- The Department fails to explain why either the worker retention agreement or the actions of the chairman of Hebei Tire demonstrate the transaction failed the arm’s length test.
- There was no identity of interests between the shareholders of Starbright and Hebei Tire.
- The fact that the worker retention agreement provided valuable consideration (in the form of future employment) to the employees of Hebei Tire as owners of Hebei Tire and that the worker retention agreement would naturally work itself into the price paid demonstrates that the transaction was “negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties.”
- The Department failed to address the Court’s concerns with the Department’s conclusions regarding the actions of the chairman. The Department did not explain how the chairman somehow acted contrary to Hebei Tire’s interests. The Department simply rephrases its earlier conclusions.

***Department’s Position:*** The Department has complied with the Court’s specific remand instructions regarding the arm’s-length analysis. According to the Court: “Because at least one of the bases for its conclusion appears flawed, on remand, Commerce must re-weigh the evidence related to the arm’s length nature of the sale.” GPX VII at 47. The Department has

done so and has concluded that both the worker retention agreement and the actions of the chairman – whether considered independently or in combination – demonstrate the transaction was not at arm’s length. Additionally, as the Department has explained in the redetermination, the transaction fails to extinguish the subsidies to Hebei Tire regardless of whether the transaction was at arm’s length because the transaction was also not at FMV.

At verification, the chairman informed the Department that he did not want to take the chance that the auction house might reject Starbright’s bid. See Starbright Verification Report at 11. Ensuring that a low bid will be accepted is not typical behavior of a seller. In fact, because the auction proceeds would go entirely to the bank that held the mortgage to the auctioned equipment, id. at 11-12, he was indifferent to the price received. Presumably, his greatest concern was with keeping his buyer happy with the auction outcome. Thus, his actions, at least at this point in time, were clearly taken on behalf of the buyer.

While it is true that the worker retention agreement was “valuable consideration” for the employee-shareholders of Hebei Tire, and that the value of the worker retention agreement may have been factored into the Hebei Tire sales price, neither fact negates the conclusion that the transaction was not at arm’s length. The employee-shareholders were being compensated in two capacities: as shareholders they were entitled to the purchase price paid by Starbright for the factory; as employees they were promised future employment with the Starbright. Advocating for both of these forms of compensation creates a conflict. The higher the price demanded from Starbright, the less likely it is to succeed with its new venture as your future employer. The employee-shareholders could not seek to maximize the gains of both the seller and buyer – whatever they gained in one capacity they lost in the other.

Finally, the fact that there is some evidence of negotiations between parties (such as the worker retention agreement and, possibly, a negotiated price for Hebei Tire's assets) does not somehow prove the transaction was at arm's length. That evidence must be weighed against other evidence suggesting the transaction was not at arm's length in that the interests of the buyer and seller overlapped to a degree that the terms of the transaction were not those that would exist if the transaction had been negotiated between unrelated parties.

## ***2. Starbright Purchase of Hebei Tire Assets – Fair Market Value***

### *Arguments of the GOC, GPX, and Starbright*

- The Department does not address the “veracity” of the asset appraisals as it was directed to do by the Court.
- The Department applies assumptions to reach unsubstantiated conclusions.
  - The Court already noted it did not find the timeliness of the appraisals compelling.
  - The Department notes the duration of the appraisals but does not explain how the time taken to conduct the appraisals affects their veracity.
  - The Department does not explain how the absence of an in toto valuation affects the veracity of the seller's appraisal.
  - There is no evidence supporting the Department's conclusion that the seller's appraiser had no experience with valuing tire assets.
  - There is no evidence that Hebei Tire lied to the appraisers or withheld information from them.

***Department's Position:*** The Department believes that the analysis in the redetermination fully meets the Court's specific order to assess the “veracity” of the two appraisals. While the GOC, GPX, and Starbright provide a fairly brief explanation of their concerns, they appear to

argue that by its use of the word “veracity,” the Court intended for the Department simply to establish whether the appraisals were “truthful” or “fraudulent.” The Department does not believe this was the Court’s intent. Rather, we believe the Court instructed us to determine whether the appraisals are reliable and to look at their “independence or validity” as well. See GPX VII at 49. The Court did not, in the Department’s view, instruct us to determine whether there was any intent to deceive, but simply whether these documents could provide a basis for determining FMV. Nor do we believe that the Court requires us to identify specific errors in the appraisals (for example, we do not need to find that a particular value in the appraisals is 100,000 RMB when it should be 200,000 RMB; the Department does not itself determine actual valuations of companies, but only assesses whether the valuation methods were consistent with expected normal commercial practices).

We do not believe that our conclusions regarding the accuracy and reliability of the appraisals are baseless or unsubstantiated. In fact, the Department believes most of the problems identified with the appraisals are self-evident and the link between such problems and the accuracy and reliability of the appraisals is clear; e.g., the seller’s appraisal valued [ ] buildings in a week; the appraisals do not clearly indicate what “part” of Hebei Tire’s assets they incorporate (and what part is ignored); the appraisals are based on information provided by a company that had great difficulty providing accurate, complete information;<sup>32</sup> the appraisers lacked experience with the particular assets at issue because there were no other tire companies

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<sup>32</sup> As noted above, one auditor noted: “[ ].” Due diligence report at 1. The Department noted similar problems with the company’s record keeping; for example: “Hebei Tire explained that it had no long-term loans, contrary to what is indicated in its balance sheet. Hebei Tire officials explained that they had simply booked a portion of short-term loans as long-term loans for the sake of appearances.” Starbright Verification Report at 19.



in the city (a conclusion clearly suggested by the chairman of Hebei Tire himself).<sup>33</sup> While these facts do not necessarily constitute direct evidence of inaccuracy or unreliability (or of any attempt to deceive), the Department finds that they constitute strong circumstantial evidence indicating that the appraisals were cursory and incomplete, and thus lacked credibility for the purposes of our FMV analysis. This Court has acknowledged the Department's authority to draw inferences from such circumstantial evidence. See, e.g., OTR Wheel Engineering, Inc. v. United States, Consol. Court No. 11-00166 Slip Op. 13-39 (March 22, 2013) at 11 and 12 (finding marketing materials and the actual end use of tires to be relevant circumstantial evidence of what the tires were originally designed for).

### ***3. Starbright Purchase of Hebei Tire Assets – Offset for Purchase Price***

#### *Arguments of the GOC, GPX, and Starbright*

- The Department cannot claim to be incapable of benchmarking a tire factory while at the same time dismissing the appraisals on the record. If the Department lacks the expertise to appraise the factory itself, it cannot judge the attempts of other parties to do so.
- The Department claims the ability to benchmark other assets that are no less unique and complex than a tire factory, for example, land.

***Department's Position:*** As an initial matter, we wish to emphasize that the subsidies in question were provided to Hebei Tire prior to the asset sale. The Department has already applied the requisite countervailing duty analysis under sections 771(5) and 771(5A) of the Act, in

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<sup>33</sup> See Starbright Verification Report at 13. The Department faulted the seller's appraisal because it consists of three separate appraisals for equipment, land, and buildings, conducted by separate local firms, without any in toto assessment. Such an approach ignores the other assets that account for an enterprise's success (and thus its value) identified by the Department in the redetermination: labor forces and management that might come with the factory, goodwill that has been established with suppliers, customers, and labor, and intellectual property and other intangible assets. As noted in the redetermination, while it may be possible to value equipment, land, and buildings by reference to capital markets, other assets cannot be valued in such a manner. It would be like concluding any law firm could be valued simply by adding together the value of its office space, copiers, desks, and stationery.

calculating the amount of those previously-bestowed subsidy benefits. No further adjustment or offsets to those statutorily determined subsidy amounts are appropriate. Moreover, as part of our CIO analysis, we are not determining whether there is a new countervailable subsidy. Thus, as explained above, we are not calculating a new benefit in the CIO analysis, but determining whether the benefit stream from the prior subsidies continues under the new owner. Therefore, there is no new benchmark to be determined.

Nevertheless, with regard to the parties' comments, the Department sees no conflict between the analysis of the appraisals above and the fact that we cannot appraise a tire factory ourselves. In keeping with the process-oriented approach of our CIO methodology, our analysis of appraisals focuses on their scope and how they were conducted (e.g., were they probing, did they take all assets into consideration, were they conducted by experts, did they consider a range of assumptions regarding the future of markets, were they based on adequate information), and whether the scope and conduct were consistent with normal commercial practices. We do not try to second-guess the numbers in the appraisals by comparing the appraisers' figures with our own. The reason we do not take the latter approach is precisely the same reason we could not calculate a benchmark: as explained in the redetermination, we do not have the expertise to appraise directly the numerous and varied assets (which may number in the hundreds, if not thousands) that make up a tire factory. We can, however, assess whether the scope and conduct of the appraisals are consistent with normal commercial practices.

As explained in the Draft Remand Results, benchmarking a tire factory is not like benchmarking a commonly traded commodity like natural rubber. A tire factory and rubber are at two different ends of a spectrum of difficulty when it comes to benchmarking assets. An asset like land, while not being as relatively simple to benchmark as rubber, is not as difficult to

benchmark as a factory either. The Department has struggled somewhat with the question of benchmarking land in the past. In Steel Wire Rod from Germany,<sup>34</sup> we found no benchmarks available (“no alternative market reference prices”) and thus evaluated whether the land was provided in a manner consistent with normal business practices. In Laminated Woven Sacks from the PRC,<sup>35</sup> however, we concluded benchmark information was available. We determined land could be adequately benchmarked after considering a small number of factors: population density, per capita income, geographic proximity, and the purpose of the land (i.e., industrial property should be compared with industrial property). We found that after taking these factors into consideration we had a reasonable and comparable benchmark for land. By contrast to these four factors, benchmarking a tire factory depends on the numerous factors detailed above. Moreover, in Laminated Woven Sacks from the PRC (and subsequent investigations), we have had available published real estate surveys from which to select appropriate benchmarks. These surveys, published by the commercial real estate firm CBRE, Inc., are prepared by experts for the purpose of benchmarking land. They are based on surveys of actual transaction prices, not the opinions of one or two individual appraisers.

#### **4. TUTRIC AFA**

##### *TUTRIC’s Arguments*

References in the BOC-Cinda agreement to ancillary debt forgiveness agreements are boilerplate. The agreement is a form agreement developed to work for 1,500 different debtors, not just TUTRIC.

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<sup>34</sup> Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany, 62 FR 54990, 54994 (October 22, 1997).

<sup>35</sup> Laminated Woven Sacks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 72 FR 67893, 67909 (December 3, 2007) (unchanged in final).

- The boilerplate nature of the agreement is demonstrated by references to “party A” and “party B” and underlining indicating the existence of a “fill-in-the-blank” format.
- It is unreasonable to conclude the BOC tailored the boilerplate agreements to the circumstances of all 1,500 different debtors.
- If ancillary debt forgiveness agreements existed, TUTRIC would have them, which it does not. No such agreements were found at verification.
- The lack of any references to ancillary agreements in the Cinda-Avenue Asia information submitted confirms that such ancillary agreements never existed. The Cinda-Avenue Asia information states that the full amount of the loans was sold to Avenue Asia, thus indicating both companies were fully entitled to collect the entire debt (first Cinda, then Avenue Asia). The fact that the full debt was sold to Avenue Asia is confirmed by an affidavit from a TUTRIC official and a newspaper article the Department reviewed during verification.
- Any decision to forgive debt was made by Avenue Asia, a private party. The Department cannot countervail debt forgiveness from a private party.

***Department’s Position:*** We continue to find as AFA that the BOC loans sold to Cinda and Avenue Asia constitute debt forgiveness to TUTRIC. It is not unrealistic to conclude that the BOC could have tailored individual loan agreements for at least some, if not all, of the 1,500 debtors involved in the restructuring. The amounts involved for TUTRIC alone are significant ([ ]),<sup>36</sup> and it is hardly unthinkable that the BOC would have wanted more than a boilerplate agreement for such amounts.

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<sup>36</sup> See Memorandum to the File, “Final Calculation Memorandum for Tianjin United Tire & Rubber International Co., Ltd. (TUTRIC),” July 7, 2008.

Regardless, the plain language of the agreement indicates either that such ancillary agreements do exist or that they might exist. The GOC bore the ultimate responsibility to clarify this matter through its questionnaire responses and verification. It did not do so. At the very least, we are no better informed now than we were during the original investigation. There may or may not be ancillary agreements between TUTRIC and Cinda. For that matter, there also may or may not be ancillary agreements between Cinda (another SOE and therefore capable of making a financial contribution) and Avenue Asia. In its January 17, 2013 submission, TUTRIC acknowledges that it has the Cinda-Avenue Asia agreement but does not provide it, in whole or in part, because of confidentiality concerns.<sup>37</sup> Of course, as already noted, the GOC did not provide either agreement despite the Department's request for such information.

In its remand opinion, the Court found that it was reasonable for the Department to place the burden for developing the record regarding this issue on the GOC, the party that lent the funds to TUTRIC and the party that may have forgiven the debt.<sup>38</sup> However, the Court ruled that "Commerce was also required to consider the record evidence put forward by TUTRIC, as the party directly affected by duties, if the information appeared reliable and its consideration would mitigate the collateral affects of the adverse inference taken against the GOC." GPX VII at 59-60. Despite that instruction, the Court specifically recognized that "Commerce may reasonably conclude that the portion of the debt that was not repaid by TUTRIC could have been forgiven as part of the debt transfer agreements if the evidence of these agreements submitted on remand still does not resolve this issue" Id. at 60. Evidence of the BOC-Cinda agreement placed on the record by TUTRIC "still does not resolve this issue."

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<sup>37</sup> See TUTRIC's January 17, 2013 submission at Attachment 1, English version of affidavit, final full paragraph.

<sup>38</sup> The fact that debt was forgiven is not in dispute. The question is whether it was forgiven by the BOC or Cinda (*i.e.*, the GOC) or Avenue Asia (a private party) or whether Avenue Asia may have been directed to do so by the GOC. In other words, the question is one of financial contribution.

Likewise, the fact that we found no evidence of ancillary debt forgiveness agreements during the verification of TUTRIC does not resolve this issue. In accordance with the Court's ruling, if we had found relevant information during TUTRIC's verification, we would have been obliged to consider it, despite the GOC's lack of cooperation. However, that does not mean TUTRIC can simply step into the shoes of the government. As acknowledged by the Court, we properly placed the burden for clarifying the exact nature of the inter-bank transfer on the GOC.<sup>39</sup> Moreover, the record does not indicate any attempt to verify the existence of relevant agreements during the TUTRIC verification, only the numbers involved.<sup>40</sup> The fact that the Department did not find such agreements was therefore happenstance, not the result of a determined effort to find such agreements.

TUTRIC argues that we must reverse our decision regarding debt forgiveness because, it claims, the record demonstrates that the complete amount of the debt at issue was sold by the BOC to Cinda and by Cinda to Avenue Asia. Assuming, arguendo,<sup>41</sup> that this is the case, we do not believe this fact requires a reversal of our debt forgiveness determination. Even after accepting additional information from TUTRIC in this remand proceeding, because of the GOC's lack of cooperation, we do not have the complete picture regarding the nature of the debt forgiveness, nor do we know what conditions or qualifications might have been part of it. For example, ancillary agreements might have provided that the debt forgiveness would take place only if TUTRIC remained insolvent for a certain period of time, if TUTRIC was unable to

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<sup>39</sup> “{B}ecause the GOC refused to provide this information, which was conceded to be within its control, Commerce was permitted to look to facts otherwise available and to apply an adverse inference against the GOC.” GPX VII at 59.

<sup>40</sup> See Memorandum to Thomas Gilgunn, “Verification of the Questionnaire Responses Submitted by Tianjin United Tire & Rubber International Co., Ltd.,” April 22, 2008, at 11.

<sup>41</sup> The evidence regarding how much debt was sold by the BOC to Cinda includes unverified worksheets submitted with TUTRIC's January 16, 2013 submission and one newspaper article. The evidence regarding how much debt was sold by Cinda to Avenue Asia includes an affidavit of a TUTRIC employee submitted with TUTRIC's January 17, 2013 submission and another newspaper article.

renegotiate debts with other creditors, if TUTRIC was unable to liquidate certain assets, or if TUTRIC was unable to secure assistance from the GOC, etc. The fact remains that investment banks such as Avenue Asia buy debt at a large discount knowing that they might not be able to recover the entire amount. It is not unreasonable to imagine that Cinda or Avenue Asia purchased the full amount of the debt knowing that they might be prohibited from recovering it all because of the realization of a conditional debt forgiveness agreement between the BOC and TUTRIC or between Cinda and Avenue Asia.

Finally, TUTRIC argues all debt forgiveness must have been conferred by Avenue Asia, a private party that cannot provide a countervailable financial contribution. This argument was already addressed by the Court: “TUTRIC argues that because the debt was last held by Avenue Asia, a private company, any forgiveness cannot constitute a countervailable subsidy. TUTRIC, however, misrepresents Commerce’s finding in which it inferred that the GOC may have forgiven the debt as it was being transferred between GOC-controlled entities.” GPX VII at 60, n.47. The Department agrees this is an accurate description of our determination.

## ***5. Loan Benefit Calculation***

### *Titan’s Arguments*

- The Department’s fails to adequately explain, or even directly address, whether China’s inflation rate is (1) a “market-based” factor for which adjustment is appropriate, or (2) a factor that reflects the very distortions that were the basis for using an external benchmark in the first place.
- The Department continues to apply the CPI adjustment in the absence of any determination as to whether, in fact, lenders and borrowers in China actually do rely on the CPI to set interest rates.

- The Department failed to address the substantial evidence collected in the investigation indicating that the price of credit in China does not, in fact, respond to the rate of inflation.

***Department's Position:***

As a preliminary matter, we note that Titan does not directly address the substantial evidence and detailed explanation on the record of this remand of why inflation adjustments are a reasonable proxy for currency conversions. Titan also does not contest the fact that there are only two options for comparing interest rates across borders, namely, currency conversions or inflation adjustments. As we explain above, either one of these two adjustments, in effect, places interest rates denominated in different currencies on a comparable, “apples-to-apples” basis. We further explain that making no adjustment results in a comparison of “apples-to-oranges,” and that any measured “benefit” could simply reflect cross-border inflation differentials or expectations about exchange rate movements. Moreover, Titan agrees with the Department that one of the two options – converting interest rates using the exchange rate in China – is problematic. That leaves the Department with only one viable option for placing interest rates of two different currencies on the same basis: remove inflation.

Here, Titan does not explicitly reject our argument that an inflation adjustment is necessary and warranted. Instead, Titan argues that the particular inflation measure that the Department relies on, the CPI, is distorted, *i.e.* “not market based,” and further finds fault with the Department’s implicit assumption that the CPI is the more appropriate or widely used measure. As an alternative inflation measure, Titan had proposed the GDP deflator. However, Titan failed to explain how or why the GDP deflator in China is an appropriate basis for an inflation adjustment, given (1) the reasons Titan cites for why the CPI is not, which apparently are not specific to the CPI; (2) record evidence indicating the standard practice of economists to calculate real interest rates on the basis of CPI-based inflation rates; and (3) the fact that GDP



deflators are typically used in a different context, to measure changes in real national (aggregate) economic output.<sup>42</sup> As Kellison notes, in the context of determining real rates of interest, CPI “is the most widely used index of inflation.”<sup>43</sup>

Titan appears to confuse two distinct concepts: (1) inflation *levels*, and (2) correlation between inflation and nominal interest rates. Titan urges the Court to reject the Department’s proposed inflation adjustment on the basis of Titan’s concerns with (1) above, even though the proposed adjustment relies only on (2) above. The proposed CPI-based adjustment relies on the simple fact, as Kellison notes, that, in general, “There is considerable evidence that rates of interest are positively correlated with rates of inflation, *i.e.*, that over time the two will tend to move in the same direction” and that despite there being some analytical difficulties with precisely measuring this relationship, “the evidence clearly indicates that the relationship does exist.”<sup>44</sup> Thus, the justification for an inflation adjustment is a correlation between nominal interest rates and inflation, not that interest rates and inflation move in lock step at all times, or that nominal interest rates and inflation are at proper levels at all times. Titan’s evidence of negative real rates in China in 2002-2004 misses the point, since such rates do not preclude the correlation between nominal interest rates and inflation described above. Even if the issue of the level of inflation in China were somehow relevant in this context, the estimation of economy-wide inflation is an extremely technical and complex endeavor – particularly in a country as large and diverse as China – and the Department is therefore in no position to second guess inflation data for China from the International Monetary Fund. We would only note that Titan

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<sup>42</sup> See International Monetary and Financial Economics at 332-337.

<sup>43</sup> The Theory of Interest at 301.

<sup>44</sup> The Theory of Interest at 298-299.

does not propose how to eliminate distortions it claims are in China's CPI, or why China's GDP deflator – which is, according to Titan, a broader measure of inflation – is not similarly distorted.

For all of the above reasons, we continue to find that removing inflation is a suitable proxy for currency conversions, and that relying on CPI as an inflation measure is reasonable.

### **FINAL REMAND REDETERMINATION RESULTS**

As explained above, we have revised the ad valorem subsidy rate for debt forgiveness for TUTRIC from 6.14 percent to 3.22 percent and TUTRIC's overall subsidy rate from 6.85 percent to 3.93 percent. No other rates have been revised.

Subsequent to the investigation, Starbright was subject to an administrative review, which reset its cash deposit rate.<sup>45</sup> In addition, pursuant to direction from the United States Trade Representative, on August 21, 2012, the Department implemented a determination under section 129 of the Uruguay Round Agreements Act (URAA) regarding the countervailing duty investigation on OTR Tires from China.<sup>46</sup> Because the section 129 determination has prospective effect from the date of implementation,<sup>47</sup> the Department stated, “unless the applicable cash deposit rate has been superseded by intervening administrative reviews, the Department will instruct U. S. Customs and Border Protection to require a cash deposit for estimated . . . countervailing duties at the appropriate rate for each exporter/producer specified above, for entries of subject merchandise, entered or withdrawn from warehouse, for

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<sup>45</sup> See New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative Review, 76 FR 23286, 23288 (April 26, 2011).

<sup>46</sup> See Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China, 77 FR 52683 (August 30, 2012) (“129 Implementation Notice”).

<sup>47</sup> See section 129(c)(1)(B) of the URAA. The SAA provides that, if the United States Trade Representative directs the Department to implement a section 129 determination, we “may do so even if litigation is pending with respect to the initial agency determination.” SAA, H. Doc. 316, Vol. 1, 103d Cong. (1994) at 1025. Moreover, a section 129 determination is considered a “new,” “second,” and “different” determination, which is subject to judicial review separate and apart from judicial review of a final determination in an investigation. Id. at 1025 and 1027; see also section 516(a)(2)(B)(vii) of the Act.

consumption, on or after August 21, 2012.”<sup>48</sup> As a consequence of these intervening determinations, should the Court sustain this remand redetermination, the cash deposit rates in effect for subsequent entries will continue to be based on the intervening administrative review for Starbright and the intervening 129 Implementation Notice for all other respondents.

**CONCLUSION**

Based on the forgoing analysis and discussion, the Department has decided, pursuant to the remand order of the Court, to recalculate the subsidy rate for TUTRIC’s debt forgiveness, as well as its total countervailable subsidy rate. Because TUTRIC’s challenge on the debt forgiveness issue did not encompass a challenge to the all-others rate, we have not recalculated the all-others rate. For the foregoing reasons, we will maintain the remainder of our determinations with the addition of the clarifying explanations noted above.

*Ronald K Lorentzen*

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

*April 16, 2013*

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(Date)

<sup>48</sup> 129 Implementation Notice, 77 FR at 52688.