

Qingdao Qihang Tyre Co., Ltd., et al. v. United States
Consol. Court No. 16-00075; Slip Op. 18-35 (CIT 2018)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT or the Court), issued on April 4, 2018, in *Qingdao Qihang Tyre Co., Ltd., et al. v. United States*, Consol. Court No. 16-00075, Slip Op. 18-35 (CIT April 4, 2018) (*Qihang Tyre*). These final results concern the final results of the administrative review of the antidumping duty order on certain new pneumatic off-the-road tires (OTR Tires) from the People's Republic of China (China), covering the period of review (POR) September 1, 2013, through August 31, 2014.¹ Previously, Commerce issued to interested parties the draft results of redetermination pursuant to remand.²

Specifically, on remand, the CIT ordered: (1) Commerce shall submit a new determination upon remand in which it recalculates export price (EP) and constructed export price (CEP) for Xuzhou Xugong Tyres Co. (Xugong) and Qingdao Qihang Tyre Co. (Qihang) without making deductions for Chinese value-added tax (VAT);³ (2) Commerce shall reconsider, and redetermine as necessary, the surrogate values (SVs) for reclaimed rubber and foreign inland

¹ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 23272 (April 20, 2016), and accompanying Issues and Decision Memorandum (IDM) (*Final Results*).

² See "*Qingdao Qihang Tyre Co., Ltd., et al. v. United States*, Consol. Court No. 16-00075; Slip Op. 18-35 (CIT 2018): Draft Results of Redetermination Pursuant to Court Remand," dated June 28, 2018 (Draft Results).

³ See *Qihang Tyre*, Slip Op. 18-35 at 61.

freight;⁴ and (3) Commerce will recalculate the margins for Xugong and Qihang, as well as the margin to be assigned to Trelleborg Wheel Systems (Xingtai) Co., Ltd. (TWS Xingtai), Qingdao Free Trade Zone Full-World International Trading Co., Ltd. (Full World), and Weihai Zhongwei Rubber Co., Ltd. (Zhongwei).⁵

As set forth in detail below, consistent with the Court’s remand order, we have: (1) recalculated EP and CEP for Xugong and Qihang without making deductions for Chinese VAT; (2) recalculated reclaimed rubber factors of production using Romanian import data as the surrogate value for reclaimed rubber inputs; and (3) recalculated foreign inland freight using a SV from the World Bank’s *Doing Business 2016: Thailand*. We then adjusted the margins for Xugong and Qihang to reflect the aforementioned changes and recalculated the margin applicable to the eligible separate rate respondents TWS Xingtai, Full World, and Zhongwei (based on margins calculated for the mandatory respondents), consistent with the Court’s instructions.

On June 28, 2018, we released the Draft Results to all interested parties, in which we provided all parties the opportunity to comment.⁶ On July 5, 2018, we received timely-filed comments from TWS Xingtai and Xugong.⁷ On July 6, 2018, we received timely-filed comments from Qihang and Zhongwei.⁸ All comments received noted the parties’ concurrence

⁴ *Id.*

⁵ *Id.*

⁶ See Draft Results.

⁷ See TWS Xingtai’s letter, “Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: TWS Xingtai Comments on Draft Remand Results,” dated July 5, 2018, and Xugong’s letter, “Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Xugong Comments on Draft Remand Results,” dated July 5, 2018.

⁸ See Qihang’s letter, “Qihang Comments on Draft Remand Redetermination Pursuant to Court Order in the Antidumping Duty Investigation of Xanthan Gum from the People’s Republic of China (A-570-985),” dated July 6, 2018, and Zhongwei’s letter, “New Pneumatic Off-the-Road Tires from the People’s Republic of China: Weihai Zhongwei Rubber Co., Ltd. Comments on Draft Remand Results,” dated July 6, 2018.

with the Draft Results, without further substantive comment. Accordingly, all responsive parties commented that Commerce should adopt the Draft Results as Commerce’s final results of redetermination, changing only the weighted-average margins listed in the Draft Results to correct for a previously acknowledged clerical error.⁹ We agree, and thus adopt the positions set forth in the Draft Results, as well as the accompanying draft margin calculations, for these final results of redetermination. Therefore, our redetermination analysis, as provided to interested parties and materially unchanged from the Draft Results, is provided immediately below in Section B, “Analysis” and the corrected weighted-average margins are listed below in Section C, “Final Results of Redetermination.”

B. ANALYSIS

1. Commerce’s Calculation of Unrefunded/Irrecoverable VAT

Background

In the *Final Results* of this administrative review, we stated that, pursuant to section 772(c)(2)(B) of the Tariff Act of 1930, as amended (Act), when Commerce calculates export

⁹ Due to an inadvertent error not discovered prior to the upload of the Draft Results to the record of this proceeding, the Draft Results listed incorrect weighted-average margins for each respondent and the separate rates companies (33.56 percent for Xugong, 30.25 percent for Qihang, and 32.23 percent for the separate rates companies). However, the error was identified and corrected before the calculation documents were uploaded to the record and, as such, the draft results analysis memoranda for Xugong and Qihang and the separate rate calculation memorandum issued with the Draft Results each noted the correct weighted-average margins (23.45 percent for Xugong, 13.93 percent for Qihang, and 20.03 percent for the separate rates companies). These documents stated that Commerce recognized the error in the Draft Results and intended to correct the margin listed in the Draft Results to reflect those stated in the calculation memoranda should no further changes be required for the final results of redetermination. *See* memoranda, “Draft Results of Redetermination Pursuant to Court Remand in the 2013-14 Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Draft Remand Analysis Memorandum for Xuzhou Xugong Tyres Co.” (Xugong Draft Results Analysis Memo) at 2, “Draft Results of Redetermination Pursuant to Court Remand in the 2013-14 Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Draft Remand Analysis Memorandum for Qingdao Qihang Tyre Co.” (Qihang Draft Results Analysis Memo) at 1-2, and “Draft Results of Redetermination Pursuant to Court Remand in the 2013-2014 Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Draft Results Margin Calculation for Separate Rate Companies” (Draft Remand SR Memo) at 1, each dated June 29, 2018.

price, it deducts from its calculation any “export tax, duty or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States.”¹⁰ Notably, the statute does not define “export tax, duty or other charge imposed.”¹¹ In 2012, Commerce, following notice and comment procedures, determined that these terms include, *inter alia*, “an export tax or VAT that is not fully refunded upon exportation.”¹²

We explained in the IDM that interpreting section 772(c)(2)(B) of the Act to include “VAT that is not fully refunded upon exportation,” *i.e.*, irrecoverable or unrefunded VAT, is a reasonable interpretation of the statute because irrecoverable VAT “amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales.”¹³ In a typical VAT system, companies receive on export a *full* rebate of the VAT they paid on the purchase of inputs (*i.e.*, input VAT).¹⁴ For domestic sales, companies deduct the prior-paid input VAT from the VAT imposed on the domestic sales.¹⁵ That is, in a typical VAT system, for both domestic and foreign sales, companies can recover the VAT paid on inputs.

The Chinese system, by contrast, may result in companies having unrefunded or irrecoverable VAT, specifically “some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.”¹⁶ Under the Chinese

¹⁰ See section 772(c)(2)(B) of the Act; *Final Results* IDM at 22.

¹¹ *Id.*; see also Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 823; *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People’s Republic of China*, 79 FR 25572 (May 5, 2014) (*Prestressed Wire*), and accompanying IDM at Comment 1 (stating that the statute does not define “export tax, duty or other charge imposed”).

¹² See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, in Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36482 (June 19, 2012) (*Methodological Change*); see also *Proposed Methodology for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, in Certain Non-Market Economy Antidumping Proceedings; Request for Comment*, 76 FR 4866 (January 27, 2011) (*Proposed Methodology*).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

VAT system, companies do not always receive a full refund of the VAT for exports when the government-mandated VAT refund rate for a particular exported product is less than the government-mandated VAT rate (resulting in an unrefunded or irrecoverable VAT). Where this occurs, irrecoverable VAT “is a net VAT burden that arises solely from, and is specific to, exports.”¹⁷ Thus, we concluded that irrecoverable VAT amounts to an export tax. We also explained that under section 772(c)(2)(B) of the Act, Commerce may deduct the amount, if included in the price, of any “export tax, duty, or other charge imposed by the exporting country on the exportation” of the subject merchandise.¹⁸

In the *Final Results*, we determined that adjusting for irrecoverable VAT, which equates to an export tax, is consistent with section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer (which would otherwise include the unrefunded VAT in the amount charged to the U.S. customer) to a net price received. Moreover, this deduction is consistent with Commerce’s longstanding policy that dumping margin calculations be tax-neutral.¹⁹

For purposes of the underlying antidumping administrative review, we analyzed the irrecoverable VAT information Xugong and Qihang placed on the record and followed the methodology outlined in the *Methodological Change*.²⁰ In the *Final Results* we explained our practice is that we will not consider allocations across all company sales or across sales of products with different VAT schedules but, rather, will use the difference between the VAT rate

¹⁷ *Id.*; see also *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) (Diamond Sawblades 11-12) and accompanying IDM at Comment 6; and *Multilayered Wood Flooring from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 2011-2012*, 79 FR 26712 (May 9, 2014) (MWF 11-12) and accompanying IDM at Comment 3; and *Prestressed Wire IDM at Comment 1*.

¹⁸ See *Final Results* IDM at 28.

¹⁹ *Id.* at 24 n. 139.

²⁰ *Id.* at 21.

and the refund rate, consistent with Chinese regulations, unless the company can show otherwise for the subject merchandise.²¹ The information placed on the record by Xugong and Qihang shows that the standard VAT levy is 17-percent and the rebate rate for subject merchandise is nine percent.²² Therefore, for Xugong we calculated, using the formula contained in the Chinese regulations, the amount of irrevocable VAT it was required to maintain in its books and records, and we reduced this amount from U.S. price. As for Qihang, because information placed on the record by Qihang indicates that it made market economy purchases through a bonded warehouse (and for which a bonded import adjustment is made by the Chinese Government), we took this adjustment into account in our calculations. Thus, for Qihang, using the formula contained in the Chinese regulations, we calculated the amount of irrevocable VAT it was required to maintain in its books and records, and we reduced U.S. prices by this amount, as adjusted for the bonded imports.²³

In its decision, the Court held that Commerce did not make a finding, and the record could not support a finding, that Xugong and Qihang actually paid VAT to the Chinese government upon exportation of subject merchandise.²⁴ Specifically, the Court found that Commerce failed to state a factual finding that either Xugong or Qihang actually *paid* VAT to the government of China “on the exportation of” subject off-the-road tires to the United States, as required by section 772(c)(2)(B) of the Act.²⁵ The Court further explained that Commerce’s statement that irrecoverable VAT “amounts to an export tax, duty, or other charge imposed on

²¹ *Id.*, citing, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) and accompanying IDM at Comment 6.

²² *Id.*, citing Qihang’s February 23, 2015 Section C Questionnaire Response (Qihang CQR) at 43-50 and Exhibit C-6 through 7 and Xugong’s February 27, 2015 Section C Questionnaire Response (Xugong CQR) at 56-59.

²³ *Id.* at 24-25.

²⁴ See *Qihang Tyre*, Slip Op. 18-35 at 9.

²⁵ *Id.*

exported merchandise,” and “is a product-specific export tax, duty, or other charge that is incurred on the exportation of subject merchandise” was not equivalent to an actual finding.²⁶

The Court further went on to explain that, if it was to interpret any of Commerce’s quoted statements to mean Commerce found as a fact that the mandatory respondents actually paid irrecoverable VAT “on the exportation of” their subject merchandise, such statements would conflict with Commerce’s finding that exportation of subject merchandise resulted in a refund of VAT, calculated as nine percent of the FOB export value of the tires. Additionally, the Court stated that, in its view, the record in this case would not have supported a finding that Xugong and Qihang paid the VAT upon the exportation of the subject merchandise.²⁷ Specifically, according to the Court, the questionnaire responses of both mandatory respondents constitute record evidence that the VAT incurred by these respondents resulted from purchases of some of the material inputs used in OTR tire production.²⁸

The Court further held that Commerce based its downward adjustments to the EP and CEP starting prices for subject merchandise exported by Xugong and Qihang on an impermissible construction of section 772(c)(2)(B) of the Act.²⁹ Specifically, the Court concluded that Congress did not intend for such deductions to occur based on the plain meaning of the statute and that the congressional legislative history also fails to support Commerce’s interpretation of the statute.³⁰ As such, “Congress had an intention on the precise question at issue” that “must be given effect.”³¹ Thus, the Court held that Commerce’s interpretation of

²⁶ *Id.* at 10.

²⁷ *Id.* at 11.

²⁸ *Id.* at 12.

²⁹ *Id.* at 27.

³⁰ *Id.* at 24-26 (“Congress was familiar with the concept of an irrecoverable VAT and addressed it by enacting provisions under which irrecoverable VAT would neither increase nor decrease a dumping margin.”).

³¹ *Id.* at 13 (citing *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 n.9 (1984)).

section 772(c)(2)(B) of the Act to allow it to deduct irrecoverable VAT from EP or CEP starting prices must be set aside according to *Chevron*, step one.³² The Court also explained that, although prior decisions have found Commerce's interpretation of section 772(c)(2)(B) of the Act to be reasonable, the instant proceeding was the first to consider whether Commerce's interpretation was consistent with statutory history and legislative purpose, and with legislative history as shown in the SAA.³³

As such, the Court directed Commerce to recalculate EP and CEP without a downward adjustment for irrecoverable VAT.³⁴

Analysis

We respectfully disagree with the Court's finding that Commerce impermissibly construed section 772(c)(2)(B) of the Act with respect to irrevocable VAT, and maintain that our current practice, as described *supra*, is consistent with the statute and thus in accordance with law. Nevertheless, in accordance with the Court's explicit directive that Commerce recalculate EP and CEP sales for Xugong and Qihang without making deductions for Chinese VAT, but under respectful protest,³⁵ for these final results of redetermination on remand, Commerce has recalculated the margin programs to exclude the irrevocable VAT deduction for both Xugong and Qihang.³⁶

³² *Id.* at 26.

³³ *Id.*

³⁴ *Id.* at 61.

³⁵ See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

³⁶ We have made no changes to the margin calculations for the respondents since the issuance of the Draft Results. Therefore, see Xugong Draft Results Analysis Memo and Qihang Draft Results Analysis Memo for further explanation.

2. Whether the Surrogate Value for Reclaimed Rubber is Aberrational

Background

In the underlying review, Commerce selected Thailand as the primary surrogate country and thus valued reported consumption of reclaimed rubber factors of production (FOPs) using the average unit value (AUV) of Thai imports of merchandise classified under Harmonized Tariff Schedule (HTS) category 4003.00 (“Reclaimed Rubber in Primary Forms”) during the POR, as sourced from official Thai import statistics and reported by Global Trade Atlas (GTA).³⁷

In the *Final Results*, Commerce found that, despite the reclaimed rubber AUV for Thailand being two-and-a-half times the median value from most of the other potential surrogate countries listed by Commerce, the price difference was not so substantial that it called into question the validity of the Thai value for reclaimed rubber or constituted evidence that the value was indeed aberrational.³⁸ Specifically, we determined that, though the Thai value is the highest of the potential surrogates listed by the Office of Policy, it falls within the reasonable continuum of values when benchmarked against the AUVs for all countries within the range of bookends set by the highest and lowest gross national income (GNI) countries listed by the Office of Policy.³⁹ Furthermore, Commerce found that a 32-33 percent decrease in the price of natural rubber during the POR was sufficient to explain the cost of natural rubber falling below the consistently increasing cost of reclaimed rubber.⁴⁰ As such, we determined that the higher cost of reclaimed rubber as compared to natural rubber did not signal that the reclaimed rubber value was aberrational or unusual.⁴¹

³⁷ See *Final Results* IDM at 54.

³⁸ See *Qihang Tyre*, Slip Op. 18-35 at 31.

³⁹ See *Final Results* IDM at Comment 10.

⁴⁰ *Id.* (citing Petitioners’ 2nd SV Submission at Attachment 6).

⁴¹ *Id.* at 56-57.

Additionally, we determined the number of imports represented by the Thai reclaimed rubber value was well within Commerce’s understanding of a commercially viable quantity; thus, it was not distortive.⁴² Moreover, because we determined that the price for reclaimed rubber was not aberrational, we determined the reclaimed rubber surrogate value for Peru, although based on a larger quantity of imports as compared to the Thai data, was not any more specific to the input in question as compared to the Thai data.⁴³ As such, in accordance with Commerce’s preference to value all factors using a single surrogate country, we valued the reclaimed rubber FOP using the Thai surrogate value in the *Final Results*.⁴⁴

The Court held that Commerce’s finding that its surrogate value for reclaimed rubber is not aberrational is unsupported by the record evidence considered.⁴⁵ Specifically, Commerce did not reach a valid finding that it valued reclaimed rubber using the “best available information” as required by section 773(c)(1) of the Act.⁴⁶ As such, the Court held that Commerce must reconsider the value used and reach a new determination based on findings supported by substantial evidence on the record.⁴⁷ Specifically, the Court stated, “Commerce itself acknowledged, the Thai AUV for reclaimed rubber was approximately two-and-one-half times the median value for this product obtained from import data from most of the other potential surrogate countries.”⁴⁸ Furthermore, the Court noted that producers of subject merchandise use reclaimed rubber in the production of off-the-road tires instead of natural rubber because of its

⁴² *Id.* at 55.

⁴³ *Id.* at 56 (citing Petitioners’ Rebuttal Case Brief at 19 graphing the reclaimed rubber values for the economically comparable countries on the record).

⁴⁴ *Id.*

⁴⁵ See *Qihang Tyre*, Slip Op. 18-35 at 30-31.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 29.

cost advantage.⁴⁹ Thus, the Court ordered Commerce to reconsider its determination concerning the surrogate values for reclaimed rubber, as necessary.⁵⁰

Analysis

In accordance with the Court's holding that Commerce must reconsider its determination regarding its selection of the SV for reclaimed rubber, we have reviewed the record of this proceeding and upon reconsideration determine that Romanian price data for imports of merchandise classified under HTS category 4003.00 obtained from GTA represent the best available information on the record to value reported consumption of reclaimed rubber FOPs, as discussed below.

As an initial matter, we have taken into consideration the Court's holding that our determination that the \$2.49/Kg SV used in the *Final Results* is not aberrational is unsupported by substantial evidence on the record. Specifically, in consideration of record evidence regarding the historic relationship between natural rubber and reclaimed rubber prices,⁵¹ unrebutted statements by Xugong regarding the cost advantage afforded by reclaimed rubber,⁵² and the fact that the Thai reclaimed rubber SV was approximately two-and-one-half times the median value for this product obtained from import data from most of the other potential surrogate countries, we determine that the Thai SV data used in the *Final Results* is unreliable. Thus, Commerce has disregarded the Thai SV for reclaimed rubber for the remand redetermination. Therefore, in accordance with the Court's remand directive, we have re-evaluated the other SV sources on the record to determine the best available information from which to value consumption of reclaimed rubber inputs.

⁴⁹ *Id.* at 30-31.

⁵⁰ *Id.* at 61.

⁵¹ See Qihang 2nd SV Submission at Exhibit 2.

⁵² See Xugong's Case Brief at 3.

Upon review of the record, in the absence of usable data from the primary surrogate, we determine that Romanian price data for imports of merchandise classified under HTS category 4003.00 obtained from GTA represent the best available information on the record to value reported consumption of reclaimed rubber FOPs, and not the Peruvian AUV data as suggested by the Plaintiffs. In the underlying case, parties offered extensive rebuttal SV information with respect to supporting and/or rebutting various SVs, including reclaimed rubber. As such, the record contains import price data for merchandise classified under HTS 4003.00 not just for all potential surrogate countries, but for all countries within the GNI bookends of the countries selected by Policy⁵³ for consideration as the primary surrogate.⁵⁴ All such data is representative of imports of merchandise classified in the same harmonized 6-digit category, which is itself specific to the input in question (*i.e.*, 4003.00 is precise to reclaimed rubber). Accordingly, all such data is equally specific to the FOP at issue. In distinguishing what accounts for the best available data from a pool of equally-specific data points from economically comparable countries, we find that the Romanian data represents the most robust dataset in terms of quantity. The resulting AUV also rests near the mean and median price of all reclaimed rubber data points on the record, and well below the natural rubber SV price, thus addressing the Court's concerns regarding the cost advantage of reclaimed rubber.⁵⁵ Specifically, the Romanian data is

⁵³ See Commerce's letter, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," dated January 26, 2015 (SC List) at Attachment I.

⁵⁴ See the petitioners' letter, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-the-Road Tires from China (A-570-912): Petitioners' Second Surrogate Value Submission," dated August 31, 2015 (Petitioners' 2nd SV Submission) at Attachment 6; see also Xugong's letter, "New Pneumatic Off-the-Road Tire from the PRC: Provision of Initial Surrogate Values by Xuzhou Xugong Tyres Co. Ltd.," dated March 19, 2015 (Xugong 1st SV Submission) at Exhibit 7.

⁵⁵ *Id.* We have made no changes to the margin calculations for the respondents since the issuance of the Draft Results. Therefore, see "Draft Results of Redetermination Pursuant to Court Remand in the 2013-2014 Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Factors of Production Memorandum," dated June 29, 2018 (Draft Remand FOP Memo) for further explanation.

composed of over 3,967,111 kg of imports from 16 countries, which is 3.5-times the quantity of the country with the next highest import quantity (*i.e.*, Peru, with 1,102,938 kg of imports) and 19.32-times the quantity of the Thai value used in the *Final Results*.⁵⁶

Further, the \$1.07/Kg AUV of the Romanian import data rests exactly in the middle of the range of reclaimed rubber values and just below the \$1.19/kg simple average of all AUVs (excluding Thailand), and is 46.77 and 53.07 percent lower than the Thai SVs for natural rubber.⁵⁷ Thus, the Romanian data does not appear as an outlier, as it represents the median AUV based on all identified economically comparable countries with usable import quantity data, while also representing the most substantial dataset in term of quantity. Finally, as Romania was explicitly listed by the Office of Policy as a potential surrogate country, Commerce has already determined on the record that Romania is both at a level of economic development comparable to China and is a significant producer of comparable merchandise.⁵⁸ Therefore, we find that Romanian import data represents the “best available information” on the record to value reclaimed rubber inputs and have used the Romanian SV data to value reclaimed rubber FOPs in recalculating the margins for Xugong and Qihang for these final results of redetermination on remand.⁵⁹

⁵⁶ *Id.* Other countries considered also have a significantly lower quantity of imports in comparison: Bulgaria (367,000 kg), Serbia (306,485 kg), Ukraine (93,521 kg), Ecuador (170,346 kg), South Africa (312,374 kg), Montenegro (839 kg), Colombia (16,002 kg), and Algeria (58,157 kg). Of the other countries for which data was available, we note that Commerce considers Belarus a non-market economy, and determined in the underlying review that the low-quantity high-priced data from Paraguay and Jordan (which exceeded the AUV of the Thai value by a significant margin) were aberrational, thus Commerce did not consider the values listed on the record for these countries.

⁵⁷ *Id.* The AUVs of the other countries considered are as follows: Peru at \$0.53/Kg, Bulgaria at \$0.79/Kg, Serbia at \$0.82/Kg, Ukraine at \$0.90/Kg, Ecuador at \$0.99/Kg, South Africa at \$1.34/Kg, Montenegro at \$1.41/Kg, Colombia at \$1.84/Kg, and Algeria at \$2.21/Kg.

⁵⁸ See *Preliminary Results* PDM at 22 and 24.

⁵⁹ See Draft Remand FOP Memo at 3-7.

3. Surrogate Value for Foreign Inland Freight

Background

In the underlying review, Qihang and Xugong disagreed with the distance used by Commerce to calculate foreign inland freight,⁶⁰ and Xugong argued that *Doing Business 2016: Thailand* should be added to the administrative record for use in calculating foreign inland freight.⁶¹ In the *Final Results*, to value foreign inland freight, Commerce used SV information obtained from the World Bank's *Doing Business 2015: Thailand* report. The *Doing Business 2015: Thailand* report estimated a cost of \$210 to transport products in a standard 20-foot shipping container weighing 10 metric tons from the largest city in Thailand, *i.e.*, Bangkok, to the nearest seaport, identified as "Port: Bangkok."⁶² Though acknowledging certain issues and ambiguities with the data, Commerce ultimately determined that it represented the best available information on the record to value inland freight, and that certain presumptions argued for by Plaintiffs with respect to the calculation were unsupported by the record.⁶³ Specifically, because the *Doing Business 2015: Thailand* report did not contain information regarding the distance goods would have to travel to reach the nearest port nor to which port the goods would have to travel, Commerce used distances from 26-commercial districts (*i.e.*, non-residential and non-agricultural districts) in Bangkok to the Bangkok Port located in the city center,⁶⁴ as the record

⁶⁰ See Xugong's Case Brief, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Rebuttal Brief: Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated December 23, 2015 (Xugong's Case Brief) at 42-47 and Qihang's Case Brief, "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. - Revised Administrative Case Brief," dated December 21, 2015 (Qihang's Case Brief) at 13-14 and 22-30.

⁶¹ See Xugong's Case Brief at 47.

⁶² See Petitioners' First Surrogate Value Submission at Exhibit 9.

⁶³ See *Final Results* IDM at Comment 11. The *Doing Business 2015: Thailand* report did not present information on the starting location used in the underlying data, nor to which specific seaport the "Port: Bangkok" was referring (*i.e.*, Laem Chabang or Bangkok Port), thus, the actual distance goods would have to travel (necessary to calculate the per kilogram per kilometer SV) remained ambiguous and the calculation thereof necessarily relied upon estimates and presumptions based on the existing record.

⁶⁴ See Petitioners' 2nd SV Submission at Attachment 8 (using a Bangkok Post report describing clusters in the city).

contained information in support of these presumptions, as provided by the petitioners in the underlying review, whereas the respondents failed to timely provide information to rebut that distance information nor support an alternative presumption.

In its ruling, the Court determined that Commerce did not address the issue of whether inland freight data from Peru could constitute the best available information on the record.⁶⁵ The Court stated that Commerce could not refuse to consider the Peruvian information simply because it has a preference to value factors using a single surrogate country.⁶⁶ The Court stated that section 773(c)(1) of the Act contemplates situations in which Commerce may need to rely upon data from more than one surrogate country to fulfill its statutory obligation to value a factor of production according to the best available information.⁶⁷ Furthermore, the Court stated that, when the record of the administrative review contains alternate information that could be used in calculating a surrogate value, Commerce is obligated to determine what information constitutes the “best available information” pursuant to section 773(c)(1) of the Act.⁶⁸ As such, Commerce was obligated to consider Qihang’s argument that the inland freight data from Peru were better than the competing data from Thailand.⁶⁹ Thus, the Court disagreed with Commerce’s conclusion that it did not need to weigh the Peruvian inland freight data that were on the record,⁷⁰ stating:

While the regulation expresses a preference for using information from only one surrogate country (except for the labor factor of production), the regulation cannot be read so broadly as to defeat the statutory directive that the factors of production be valued according to the best available information. In other words, the uniformity of data that results from having all surrogate values determined

⁶⁵ See *Qihang Tyre*, Slip Op. 18-35 at 35.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 35-36.

⁶⁹ *Id.* at 36, citing *SKF USA Inc. v. United States*, 630 F.3d 1365, 1374 (Fed. Cir. 2011) (“Commerce also has an ‘obligation’ to address important factors raised by comments from petitioners and respondents.”).

⁷⁰ *Id.* at 35.

according to data from the same surrogate country may be a consideration in deciding which surrogate data to use for a particular factor of production.⁷¹

Furthermore, the Court stated that because Commerce failed to address Qihang's argument regarding whether the Peruvian data is the best available information on the record to value foreign inland freight, Commerce impermissibly failed to weigh the relative merits of the Peruvian foreign inland freight data.⁷² Therefore, the Court directed Commerce to reconsider its surrogate value selection for foreign inland freight.⁷³

On May 24, 2018, Commerce placed the following items onto the record of this proceeding, (1) *Doing Business 2016: Thailand*, (2) Methodology for Trading Across Borders – Doing Business (2016), and (3) International Financial Statistics Thai Producer Price Index (PPI) Data (obtained from <http://data.imf.org>). We granted interested parties an opportunity to comment and/or provide rebuttal factual information to the new factual information placed upon the record.⁷⁴ On May 30, 2018, counsel for Qihang provided comment in support of the use of the *Doing Business 2016: Thailand* report as the basis for the foreign inland freight SV,⁷⁵ specifically noting the following:

- The *Doing Business 2015: Thailand* report is flawed in that it does not provide a critical element to calculating a truck freight surrogate value (*i.e.*, the specific distance to the nearest port used to calculate the specific cost connected to transporting goods).⁷⁶
- The omission compounds the fact that the report ambiguously identifies the port of exit as “Port Name: Bangkok,” as well as the lack of specificity regarding the point of origin in Bangkok from where the cargo travels to the port of export for the survey.⁷⁷

⁷¹ *Id.* at 36.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See memorandum, “Transmittal of New Factual Information for Consideration in Valuing Inland Truck Freight Factors and Request for Rebuttal Information and/or Comment,” dated May 24, 2018 (Freight SV Memo).

⁷⁵ See Qihang's letter, “Qihang's Comments on New Factual Information for Valuing Truck Freight: Remand Redetermination Re: 2013-14 Administrative Review of the AD Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China,” dated May 30, 2018 (Qihang's Comments).

⁷⁶ *Id.* at 6.

⁷⁷ *Id.*

- Commerce’s decision to place a copy of the *Doing Business 2016: Thailand* report along with supporting information on the record is both responsive to the Court’s concerns in this remand proceeding and supported by the judicial precedent.⁷⁸
- In support of its position, Qihang cites *Taian Ziyang Food Co. v. United States*, 783 F. Supp. 2d 1292 (CIT 2011), a case in which the Court held that when Commerce does not have sufficient information on the record to determine an accurate surrogate value based upon objective and specific facts, rather than subjective conjecture driven by ambiguous information, Commerce must take steps to develop the record further to satisfy its statutory obligation to support its decision through substantial record evidence.⁷⁹
- The *Doing Business 2016: Thailand* report meets all of Commerce’s surrogate value requirements, cures deficiencies found in the other record truck freight sources, and, thus, provides the best available information on the record for valuing truck freight.⁸⁰ Specifically, the *Doing Business 2016: Thailand* report provides the critical piece of information missing from the *Doing Business 2015: Thailand* report, *i.e.*, a specific distance factor of 129-kilometer, which is based on the distance between a specific point in Bangkok city and the seaport of Laem Chabang. As such, the *Doing Business 2016: Thailand* report provides all three critical parameters necessary for computation of an accurate surrogate value for truck freight.⁸¹

No other parties submitted comments on Commerce’s May 24, 2018, memorandum.

Analysis

In compliance with the directive from the Court, we reviewed the Peruvian data for inland freight on the underlying record to determine whether the information might reasonably serve as a sustainable basis for the SV for foreign inland freight.⁸² First, with respect to the cost information reported in the numerator of the calculation of the SV, the Peruvian data is based on a single price quote from the shipping provider Maersk.⁸³ While Commerce has used Maersk price quotes as a source for SV information, our preference is for sources which provide actual price data, not quotes. In comparison, the price information provided by the *Doing Business 2015: Thailand* report used in the *Final Results* is a standard source based on actual prices paid

⁷⁸ *Id.* at 7.

⁷⁹ *Id.* at 6.

⁸⁰ *Id.*

⁸¹ *Id.* at 7.

⁸² See Xugong’s letter, “New Pneumatic Off-the-Road Tires from the PRC: Provision of initial Surrogate Values by Xuzhou Xugong Tyres Co. Ltd.,” dated March 19, 2015 (Xugong First SV Submission) at 3 and Exhibit 8.

⁸³ *Id.*

by multiple questionnaire respondents; thus, regardless of issues of ambiguity regarding the distance to which this price information applies, the Peruvian information is an inferior source in terms of its specificity of price data when compared to the Thai data used in the *Final Results*.

Regardless, any such slight disadvantage with respect to the source of the price data could potentially be outweighed if the Peruvian data were shown to remedy the issues and ambiguities found with respect to the distance information underlying the Thai data used in the *Final Results*. However, in this respect, our review of the record demonstrates that the Peruvian information, in fact, suffers from similar ambiguities and presumptions regarding distance akin to the Thai data used by Commerce in its *Final Results*.⁸⁴ Specifically, the price quote indicates only that it is for a shipment of tires from Lima, Peru to Los Angeles, with tires specified as the commodity being shipped and a \$242 per container inland haulage rate included in the quote used as the basis for the inland freight price numerator.⁸⁵ Notably, there is *no* information provided in this quote regarding the distance for which this haulage charge applied, nor even that a “haulage” charge represents transportation expenses comparable to those covered by inland freight expenses. Moreover, Xugong’s assumption of the distance to which this fee applies, presumes that because “tires” were identified as the commodity in the quote, the charges included in the quote are representative of transporting tires manufactured by Lima Caucho, a known Peruvian producer of tires based outside Lima to the port of Callao, but there is simply no record evidence to support the underlying presumption regarding the Peruvian distance on the record. Furthermore, even the proposition underlying the supposition, *i.e.*, that entering a commodity code in the Maersk price quote system for a general query of freight costs between two cities draws upon actual underlying transaction data for producers of that commodity in that

⁸⁴ *Id.*

⁸⁵ *Id.*

market, strains credulity. Accordingly, the Peruvian data does not provide more specific information concerning the distance applied to the price information for the purpose of calculating the SV (and, arguably, is less specific) when compared to the Thai data used in the *Final Results*.

However, upon reconsideration of the record, we find that it is appropriate to disregard the *2015 Doing Business: Thailand* source for use in determining the SV for foreign inland freight. Specifically, in order to calculate an accurate surrogate value for truck freight, Commerce needs a source that provides (1) a specific cost to transport goods, and (2) a specific weight of cargo that is (3) allocated over a specific distance. Thus, Commerce prefers a surrogate value truck freight source that provides cost, weight, and distance, each of which is critical to an accurate surrogate value calculation. The *2015 Doing Business: Thailand* source fails to provide the third critical element necessary to calculate an accurate foreign inland freight SV, distance. As stated by Qihang in its comments, the 2015 report compounds the omission by ambiguously identifying the relevant port of embarkation simply as “Port Name: Bangkok,” as well as by the lack of specificity regarding the initial point of origin in the city of Bangkok from where the cargo travels to the port of export for the survey; thus, leaving Commerce to extrapolate the relevant port and applicable distance on a case-by-case basis.⁸⁶

Thus, because we find both the Peruvian data and 2015 Thai data unusable based on the record of this review, as stated above, Commerce has also considered alternative SV information that it placed on the record of this proceeding, specifically the *2016 Doing Business: Thailand* report. As noted above, Qihang was the sole party to provide comment on this issue, indicating

⁸⁶ See Qihang’s Comments at 3.

support for use of the 2016 source in this redetermination, providing information in support of both using the 2016 source and disregarding the 2015 source.

Therefore, after consideration of the record, and comments from Qihang,⁸⁷ we find that the *2016 Doing Business: Thailand* information represents the best information available on the record to value foreign inland freight. Specifically, the *Doing Business 2016: Thailand* report clarifies the methodology used to create the report's underlying data, as well as the port of embarkation of the goods used for the 2016 report, *i.e.*, Laem Chabang.⁸⁸ Furthermore, use of the Thai information is consistent with Commerce's preference to use information from a single surrogate country. Therefore, in accordance with the Court's directive to reconsider the surrogate value for foreign inland freight, we have recalculated the weighted-average dumping margins for Xugong and Qihang.⁸⁹

⁸⁷ See, generally, Qihang Comments.

⁸⁸ See Freight SV Memo at Attachment I.

⁸⁹ See Draft Remand FOP Memo at 2. Because the information contained in the *Doing Business 2016: Thailand* report is not contemporaneous with the POR, Commerce deflated the transportation cost (numerator) for its foreign inland freight calculation using International Financial Statistics Thai Producer Price Index (PPI) Data obtained from <http://data.imf.org>.

C. FINAL RESULTS OF REDETERMINATION

These final results of redetermination have resulted in a dumping margin of 13.93 percent for Qihang and 23.45 percent for Xugong.⁹⁰ In the *Final Results* we calculated the margin for separate rate respondents not individually examined using the dumping margins calculated for Qihang and Xugong.⁹¹ Accordingly, because this redetermination pursuant to remand resulted in changes to the weighted-average dumping margins for both Qihang and Xugong, using the same method, we have recalculated the margin for separate rate respondents party to this litigation, resulting in a recalculated margin of 20.03 percent for TWS Xingtai, Full World, and Zhongwei.⁹²

7/24/2018

X  _____

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

⁹⁰ See Qihang Draft Results Analysis Memo and Xugong Draft Results Analysis Memo.

⁹¹ See *Preliminary Results* PDM at 13, and adopted by the *Final Results*.

⁹² See We have made no changes to the margin calculations for the separate rate respondents party to this litigation since the issuance of the Draft Results. Therefore, Draft Remand SR Memo for further information.