

**FINAL RESULTS OF REDETERMINATION ON REMAND
PURSUANT TO
GOVERNMENT OF SRI LANKA V. UNITED STATES
SLIP OP. 18-43 (CIT April 17, 2018)**

I. SUMMARY

The Department of Commerce (Commerce) prepared these final results of redetermination on remand in accordance with the U.S. Court of International Trade’s (CIT’s) order in *Government of Sri Lanka v. United States*, Consol. Court No. 17-00059, Slip Op. 18-43 (CIT April 17, 2018). This remand concerns the final determination in the countervailing duty investigation of certain new pneumatic off-the-road tires from Sri Lanka.¹

The CIT sustained, in part, and remanded, in part, certain aspects of the *Final Determination*. The CIT remanded the *Final Determination* to Commerce “to re-calculate the net countervailable subsidies applicable to {Camso Inc., Camso Loadstar (Private) Ltd., and Camso USA Inc. (collectively Camso)}, eliminating any duties attributable to the Guaranteed Price Scheme for Rubber (GPS) based on mere reimbursement for excessive rubber payments.”² The CIT also stated that “Commerce is free to assess whether the GPS program otherwise benefitted Camso or provided an upstream subsidy to Camso within the meaning of {section 771A of the Tariff Act of 1930, as amended (the Act)}.”³ As set forth below, under respectful protest,⁴ Commerce has eliminated any duties attributable to GPS. As a result, the estimated weighted-average dumping margin for Camso becomes *de minimis*.

¹ *Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Final Affirmative Countervailing Duty Determination, and Final Determination of Critical Circumstances*, 82 FR 2949, 2950 (January 10, 2017) (*Final Determination*) and accompanying Issues and Decision Memorandum.

² See Slip Op. 18-43 at 20.

³ *Id.* at 20.

⁴ See *Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

II. BACKGROUND

Commerce preliminarily analyzed the GPS program in a memorandum following Commerce's preliminary determination in the underlying investigation, explaining the program as follows:

the Rubber Development Department (RDD) of the {government of Sri Lanka} set up a program under which buyers of rubber who purchased from { } small-scale farmers paid a guaranteed price for rubber The RDD then: 1) determined an Average Rubber Price based on various factors; and 2) reimbursed the buyers the difference between the guaranteed price they paid and the Average Rubber Price.

Under this program, the {government of Sri Lanka} reimburses the manufacturers {sic} of finished rubber products who purchase rubber from the small-scale farmers.⁵

Commerce preliminarily determined that the GPS program is countervailable, finding the reimbursement Camso received under the GPS to constitute a financial contribution in the form of a direct transfer of funds and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Commerce also found that the GPS is limited to the rubber industry and, therefore, specific under section 771(5A)(D)(i) of the Act.

In the *Final Determination*, Commerce continued to find that the GPS program provides a direct transfer of funds under section 771(5)(D)(i) of the Act, which benefits Camso in the full amount of such payments.⁶ The CIT disagreed with Commerce's analysis. With respect to whether the GPS provides a financial contribution, the CIT distinguished the reimbursement to Camso from the types of "direct transfer{s} of funds" specifically enumerated in section 771(5)(D)(i) of the Act that constitute a financial contribution, likening the government of Sri Lanka's reimbursement to Camso to an interest-free repayment of a debt rather than a grant, loan

⁵ See Memorandum to Paul Piquado, entitled "Post-Preliminary Analysis of Countervailing Duty Investigation: Certain New Pneumatic Off-The-Road Tires from Sri Lanka," dated August 18, 2016, at 2-3 (internal citations omitted).

⁶ *Final Determination* and accompanying Issues and Decision Memorandum at 21-22.

or equity infusion.⁷ The CIT also stated that, “payments to Camso under the GPS did not constitute a gift-like transfer, but rather the interest-free repayment of a debt Thus, the GPS reimbursements do not fall within the regulatory provisions applicable to grants.”⁸ With respect to whether the GPS confers a benefit, stating that Camso was “effectively providing interest-free loans to {the government of Sri Lanka},” the CIT found that the program worked to Camso’s detriment, rather than its benefit.⁹ The CIT held that “the GPS satisfies neither the statutory definition, nor the regulatory interpretation of what constitutes a benefit.”¹⁰ Based on its analysis, the CIT remanded the matter to Commerce to recalculate Camso’s net countervailable subsidy without any duties attributable to the GPS based on mere reimbursement for excessive rubber payments. The CIT also offered Commerce the opportunity to conduct an alternative analysis, stating that “Commerce may wish to conduct a full upstream subsidy analysis on remand, or otherwise examine whether some part of the reimbursement actually benefitted Camso.”¹¹

On June 1, 2018, Commerce issued the draft results of redetermination to all interested parties. We invited interested parties to comment on the draft results, and the Government of Sri Lanka filed timely comments on June 4, 2018. After considering these comments, we have not made any substantive changes for this final remand redetermination.

III. ANALYSIS

The CIT remanded the matter of the GPS program for Commerce to recalculate Camso’s net countervailable subsidy without any duties attributable to the GPS based on mere

⁷ See Slip Op. at 14.

⁸ *Id.* at 17.

⁹ *Id.* at 15.

¹⁰ *Id.* at 19.

¹¹ *Id.*

reimbursement for excessive rubber payments and offered Commerce the opportunity to conduct an alternative analysis. We have considered the opportunity and have chosen not to conduct an alternative analysis. Rather, we are following the CIT's instructions to recalculate Camso's net countervailable subsidy rate without any duties attributable to the Government of Sri Lanka's reimbursements to Camso for its payment of the "guaranteed price" to small-scale rubber farmers. For the reason that follows, we do so under respectful protest. To the extent the government of Sri Lanka stated that "the purpose of the GPS was to encourage small rubber holdings in Sri Lanka, not aid manufacturers,"¹² the government of Sri Lanka did not need to structure the program to reimburse purchasers of rubber from small rubber holdings the difference between the guaranteed rubber price and the average market price determined by the government. The government might have, instead, established a guaranteed rubber price that purchasers would pay and not get reimbursed. However, the government of Sri Lanka did not structure the program in that manner. Viewing the GPS in that light, Commerce considers that the reimbursement to Camso does constitute a financial contribution in the form of a transfer of funds and a benefit within the meaning of the Act. That view notwithstanding, in light of the CIT's instructions, Commerce has removed the duties attributable to the GPS based on mere reimbursement for excessive rubber payments from Camso's net countervailable subsidy rate.

IV. INTERESTED PARTY COMMENTS

On June 1, 2018, Commerce released the draft results of redetermination to all interested parties, and we invited parties to comment. Although the Government of Sri Lanka initially sought an extension of time to file its comments,¹³ it proceeded to file comments within the

¹² *Id.* at 10.

¹³ Request for Extension to Submit Comments on the Department's Draft Remand Results in CIT 17-59 (June 1, 2018).

original June 4, 2018 deadline,¹⁴ prior to Commerce acting on its extension request. No other interested party filed comments.

In its comments, the Government of Sri Lanka states that it agrees with the CIT's remand order and Commerce's determination to comply, but disagrees with Commerce's rationale for complying with the CIT's order under protest.¹⁵ The Government of Sri Lanka argues that the CIT did not solicit Commerce to further explain its legal rationale for countervailing the program, and that the CIT has already rejected the position Commerce explained on remand. The Government of Sri Lanka notes that the CIT found that, even if the GPS program provided a financial contribution, payments under the program would not provide a benefit.¹⁶ Finally, the Government of Sri Lanka states that it agrees that Commerce must revoke the countervailing duty order in the event its remand redetermination is sustained.¹⁷

Commerce's Position:

The Government of Sri Lanka does not object to the substance of the remand redetermination, but rather disagrees with the issuance of the remand redetermination "under protest," in connection with which explained our reason for doing so. We acknowledge that the CIT has reviewed and rejected our findings with respect to both financial contribution and benefit, and therefore sought only to explain the basis for our respectful protest. Regarding our use of the phrase "under respectful protest," we direct the interested parties to the decision of the Court of Appeals for the Federal Circuit in *Viraj*.¹⁸

¹⁴ Government of Sri Lanka's Comments on Draft Remand Redetermination in CIT 17-59 (June 4, 2018).

¹⁵ *Id.* at 1-2.

¹⁶ *Id.* at 3.

¹⁷ *Id.*

¹⁸ *See Viraj*, 343 F.3d at 1375-76.

V. REMAND RESULTS

Having received no comments on the substance of the draft results of redetermination upon remand, and per the instructions of the CIT, under respectful protest, we have recalculated the net countervailable subsidy rates for Camso and need not assign an all-others rate. The benefit attributable to the GPS program was 0.95 percent *ad valorem*.¹⁹ Removing this portion of the net countervailable subsidy rate results in a revised net countervailable subsidy rate of 1.23 percent; a rate that is *de minimis*.²⁰ Because the revised net countervailable subsidy rate for the sole mandatory respondent in this investigation, Camso, is *de minimis*, Commerce need not determine an all-others rate. Rather, if this remand is sustained, Commerce will revoke the order because the only mandatory respondent has a *de minimis* net countervailable subsidy rate.²¹

6/13/2018

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

¹⁹ See memorandum entitled “Corrected Program Rates in the Issues and Decision Memorandum,” dated January 11, 2017.

²⁰ See section 703(a)(4)(B) of the Act and *Developing and Least-Developed Country Designations under the Countervailing Duty Law*, 63 FR 29945 (June 2, 1998).

²¹ See sections 705(a)(3) and (c)(2) of the Act.