

China Manufacturing Alliance, LLC, et al. v. United States
Consol. Court No. 15-00124; Slip Op. 19-7 (CIT 2019)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (Commerce) prepared these final results of redetermination pursuant to the second remand order of the U.S. Court of International Trade (CIT or the Court), issued on January 16, 2019, in *China Manufacturers Alliance, LLC et al. v. United States*, Consol. Court No. 15-00124, Slip Op 19-7 (CIT January 16, 2019) (*China Mfr. Alliance II*). These final remand results concern the final results of the administrative review of the antidumping duty order on certain new pneumatic off-the-road tires from the People's Republic of China (China), covering the period of review (POR) September 1, 2012, through August 31, 2013.¹

The Court's order in *China Mfr. Alliance II* follows the Court's prior remand of the underlying review in *China Mfr. Alliance I* and our first remand redetermination.² The CIT sustained in part Commerce's determination, explained in the *China Mfr. Alliance I Remand Redetermination*, to recalculate warehousing expenses for one respondent in the underlying review, Guizhou Tyre Co., Ltd./Guizhou Tyre Import and Export Co., Ltd. (collectively, GTC), to account for an inflation adjustment, and to exclude Shanghai Port Charges from the

¹ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 26230 (May 7, 2015) (*Amended Final Results*); see also *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197 (April 15, 2015), and accompanying Issues and Decision Memorandum (IDM) (*Final Results*).

² See *China Manufacturers Alliance, LLC et al. v. United States*, Consol. Court No. 15-00124, Slip Op 17-12 (CIT February 6, 2017) (*China Mfr. Alliance I*). See also *Final Results of Redetermination Pursuant to Remand*, Court No. 15-00124, Slip Op. 17-12 (CIT 2017) (*China Mfr. Alliance I Remand Redetermination*).

calculation of the ocean freight surrogate value (SV), on the basis that both recalculations were consistent with the *China Mfr. Alliance I* and were unchallenged in subsequent litigation.³ Further, the Court denied Commerce’s request for a motion for a partial remand to revisit the issue of the margin calculated for Double Coin Holdings Ltd. (Double Coin), in light of the decision in *Diamond Sawblades*,⁴ on the basis that: “the only rate supported by the record evidence that Commerce reasonably could apply to the PRC-wide entity – and therefore to Double Coin – were the court to grant the requested partial remand, would be one equivalent to the 0.14% margin Commerce already determined for Double Coin in the Remand Redetermination. Because Commerce assigned that rate to Double Coin in the Remand Redetermination and does not seek to reconsider the 105.31% rate it assigned to the PRC-wide entity (except with respect to Double Coin), granting defendant’s motion for a partial remand would serve no purpose.”⁵

Accordingly, in *China Mfr. Alliance II*, the CIT has remanded two remaining issues and directed Commerce to: (1) submit a new determination in which it recalculates export price (EP) and constructed export price (CEP) for GTC by removing the downward adjustments for irrecoverable value-added tax (VAT) from the calculation of GTC’s weighted-average dumping margin;⁶ and (2) ensure that no costs are double-counted between the underlying SV information used to value Chinese brokerage and handling expenses and that used to value ocean freight expenses, or between the ocean freight SV and the information used to value U.S. inland freight expenses, in calculating GTC’s margin.⁷

³ See *China Mfr. Alliance II* at 8-9 and 42.

⁴ See *Diamond Sawblades Mfrs. Coal. v. United States*, 866 F.3d 1304 (Fed. Cir. 2017), at 1313 n.6.

⁵ See *China Mfr. Alliance II* at 41-42.

⁶ *Id.* at 19 and 42.

⁷ *Id.* at 25 and 42.

As set forth in detail below, consistent with the Court’s second remand order, we have: (1) under respectful protest, recalculated EP and CEP for GTC without making deductions for irrecoverable VAT;⁸ and (2) adjusted GTC’s brokerage and handling and ocean freight costs for certain double-counted expenses.⁹ In light of these determinations, Commerce has made changes to GTC’s margin calculation.¹⁰ Because we assigned the 0.14% *de minimis* margin to Double Coin in the *China Mfr. Alliance I Remand Redetermination* pursuant to the Court’s directive, we have made no further changes to Double Coin’s margin calculation in this second remand redetermination.

B. REMOVAL OF IRRECOVERABLE VAT ADJUSTMENT IN CALCULATING GTC’S DUMPING MARGIN

Background

In *China Mfr. Alliance I*, the Court ordered Commerce to reconsider the adjustment for irrecoverable VAT for EP and CEP for GTC in accordance with its Opinion and Order.¹¹

After reconsideration per the Court’s Opinion and Order, Commerce reasoned that its deduction of irrecoverable VAT from GTC’s U.S. prices was in accordance with law, and in light of the record evidence, continued to make an irrecoverable VAT adjustment in calculating GTC’s weighted-average dumping margin.¹²

⁸ See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003) (*Viraj Group*).

⁹ See *China Mfr. Alliance II* at 25.

¹⁰ See memorandum, “Draft Results of Redetermination Pursuant to Second Court Remand in the 2012-2013 Antidumping Duty Administrative of Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Margin Calculation and Surrogate Value Memorandum for Guizhou Tyre Co., Ltd. and Guizhou Tyre Import and Export Co., Ltd.,” dated March 21, 2019 (GTC’s Draft Results Analysis and SV Memo).

¹¹ See *China Mfr. Alliance I* at 41-42, 67.

¹² See *China Mfr. Alliance I Remand Redetermination* at 12.

In *China Mfr. Alliance II*, the Court disagreed that the statute allows for an irrecoverable VAT adjustment and directed Commerce to recalculate EP and CEP without a downward adjustment for irrecoverable VAT.¹³

Analysis

We respectfully disagree with the Court's decision in *China Mfr. Alliance II* concerning the irrecoverable VAT adjustment used in GTC's weighted-average margin calculation. Nevertheless, in accordance with the Court's explicit directive that Commerce recalculate EP and CEP for GTC without making deductions for Chinese VAT, under respectful protest,¹⁴ we have recalculated EP and CEP in the margin program for GTC to exclude the irrecoverable VAT deduction.¹⁵

C. RECALCULATION OF GTC'S OCEAN FREIGHT SURROGATE VALUE

Background

Section 772(c)(2)(A) of the Act requires Commerce to reduce U.S. price (*i.e.*, the starting prices for determining EP or CEP) by "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States."

In compliance with section 772(c)(2)(A) of the Act, in the *Final Results*, Commerce valued brokerage and handling costs incurred in China based on prices included in the World Bank *Doing Business 2014: Indonesia* report (*Doing Business*).¹⁶ Additionally, Commerce

¹³ See *China Mfr. Alliance II* at 18-19, 42.

¹⁴ See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

¹⁵ See GTC's Draft Results Analysis and SV Memo at Attachment 4.

¹⁶ See *Final Results* IDM at 44.

valued trans-Pacific Ocean freight from China to the United States using a calculated average of monthly per-container shipping prices for both the East and West coast sales using quotes published online by Descartes Systems Group, Inc. (Descartes).¹⁷ In the *Final Results*, we did not exclude any charges from the Descartes ocean freight quotes, determining that they appeared to be integral to, and necessary for, the shipment of freight and did not appear to have been included in the brokerage and handling surrogate value.¹⁸ During the underlying administrative review and in the subsequent litigation, GTC argued that Commerce double-counted certain costs by including them both in the brokerage and handling surrogate value and in the ocean freight costs, thereby overstating the CEP deduction required by section 772(c)(2)(A) of the Act.¹⁹

In *China Mfr. Alliance I*, the Court held that, “{b}ecause the Department’s finding that no double-counting occurred is not supported by substantial evidence, the court must remand the Department’s decisions as to deductions from CEP for brokerage and handling, and for ocean freight, for reconsideration.”²⁰ Specifically, the Court held that, “in reconsidering these decisions, Commerce should address specifically each of the charges in the Descartes quotes that GTC identifies as charges that may overlap with the charges Commerce obtained from the Doing Business report,” *i.e.*, “‘Documentation Charges,’ ‘Traffic Mitigation {sic} fee,’ ‘AMS Charge,’ ‘Clean Truck Fee,’ ‘Chassis Usage Charges,’ ‘Shanghai Port Charges,’ ‘International Ship & Port Security charges,’ and ‘ISD Handling Charge.’”²¹

¹⁷ See <http://rates.descartes.com>, included in GTC’s April 14, 2014 Surrogate Value Submission at Exhibit 8.

¹⁸ *Id.*

¹⁹ See GTC’s letter, “GTC Direct Case Brief: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China,” dated December 11, 2014 at 6-10.

²⁰ See *China Mfr. Alliance I* at 54.

²¹ *Id.* at 53-54.

Pursuant to the Court’s order in *China Mfr. Alliance I*, for the *China Mfr. Alliance I Remand Redetermination*, we re-opened the record to solicit further information on the individual expenses identified as potentially double-counted and, upon examination of the costs included in the Descartes international ocean freight surrogate value, as well as the information on record with respect to the costs listed in the World Bank’s *Doing Business* report as part of brokerage and handling, we determined that only the “Shanghai Port Surcharge” included in the international freight surrogate value was potentially double-counted and, thus, removed from the build-up of the ocean freight SV.²² We determined that the “Documentation Charges,” “Traffic Mitigation fee,” “AMS Charge,” “Clean Truck Fee,” “Chassis Usage Charges,” “International Ship & Port Security charges,” and “ISD Handling Charge” were unique to ocean freight or activities at the U.S. destination.”²³

In making this determination, Commerce rejected GTC’s argument that certain costs that Commerce associated with post-ocean transport are more appropriately valued under U.S. inland truck freight,²⁴ on the basis that the Court’s order in *China Mfr. Alliance I* directed Commerce to address only expenses potentially double-counted between the ocean freight and Chinese brokerage and handling (B&H) SVs, and that any potential issues regarding double-counting between the ocean freight SV and U.S. inland freight SV were not previously considered on the

²² See memorandum, “Final Results of Redetermination Pursuant to Court Remand in the 2012-2013 Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Remand Analysis and Surrogate Value Memorandum for Guizhou Tyre Co., Ltd. and Guizhou Tyre Import and Export Co., Ltd.,” dated June 21, 2017 at Attachment 4 (First Remand Redetermination Analysis Memorandum).

²³ *Id.*

²⁴ In the underlying review, GTC reported that it paid shipping charges all the way to the customer for certain sales. Accordingly, Commerce valued U.S. domestic inland freight using Descartes “price lists” to various inland locations to calculate an inland freight amount from ports on the East and West coasts and added this inland freight SV to the ocean freight SV for relevant transactions. See memorandum, “2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Results Surrogate Value Memorandum,” dated September 30, 2014 (Preliminary SV Memorandum). This price list was placed on the record in Preliminary SV Memorandum at Attachment X.

administrative record.²⁵ We further rejected GTC’s argument, reasoning that use of a ‘fully-loaded’ international freight surrogate value rendered the question whether certain charges are appropriately part of the ocean freight cost as moot.²⁶

In *China Mfr. Alliance II*, the Court sustained Commerce’s determination regarding the overlap between the Shanghai Port Surcharge in the Descartes quotes and charges in the World Bank’s *Doing Business* report.²⁷ However, the Court took issue with Commerce’s assertion that its evaluation of the record was limited in scope with respect to the characterization of certain charges as appropriately a part of the ocean freight cost.²⁸ Specifically, the Court held that its prior opinion did not preclude Commerce from considering whether alleged double-counting occurred between certain cost categories that appeared to overlap with domestic transportation costs that would be included in the prices reflected by the Descartes price lists Commerce used to calculate GTC’s U.S. inland freight costs.²⁹ The Court reasoned that “Commerce reopened the record during the remand proceeding, accepted new information during that proceeding and, following its issuance of its draft for comment by the parties, changed its position on most of the costs it determined to have been double-counted in the draft, based on the new record information.”³⁰ As such, the Court held that Commerce must give GTC the opportunity to object to Commerce’s new determination with regard to the issue of double-counting, which stemmed from the new information Commerce admitted to the record.³¹ Accordingly, the Court ordered Commerce to consider whether certain post-ocean freight charges overlap with domestic

²⁵ See *China Mfr. Alliance I Remand Redetermination* at 3.

²⁶ *Id.*

²⁷ See *China Mfr. Alliance II* at 24.

²⁸ *Id.*

²⁹ *Id.* at 23.

³⁰ *Id.*

³¹ *Id.* at 23-24.

transportation costs that would be included in the Descartes prices Commerce used to calculate GTC's U.S. inland freight costs.³²

Thus, the Court has ordered Commerce to ensure that no costs are double-counted either between (1) brokerage and handling (based on the *Doing Business* report) and ocean freight (based on the Descartes quotes), or (2) ocean freight (based on the Descartes quotes) and U.S. inland freight (based on the Descartes price lists).³³

Analysis

The Court has ordered Commerce to ensure that no costs are double-counted in either: 1) brokerage and handling (based on the *Doing Business* report) and ocean freight (based on the Descartes quotes), or (2) ocean freight (based on the Descartes quotes) and U.S. inland freight (based on the Descartes price lists).³⁴ We note that, though the first part of the Court's instructions again direct Commerce to ensure there is no double-counting between the *Doing Business* SV for brokerage and handling charges incurred in China and the ocean freight SV, with the removal of the Shanghai Port Surcharge from the ocean freight SV pursuant to *China Mfr. Alliance I*, no party to this litigation subsequently disputes Commerce's specific finding in the *China Mfr. Alliance I Remand Redetermination* that the remaining charges under consideration were either unique to ocean freight *or* activities at the U.S. destination nor further argued remain double-counted with respect to the Chinese B&H SV. Moreover, further analysis of the remaining seven charges, as discussed below, continues to support our prior finding that all such charges were unique to ocean freight or activities at the U.S. destination. Accordingly, we continue to find that the current SV calculation contains no double counting of costs between

³² *Id.*

³³ *Id.* at 25.

³⁴ *Id.*

brokerage and handling (based on the *Doing Business* report) and ocean freight (based on the Descartes quotes).

Therefore, in accordance with the Court's holding, we have reconsidered whether the seven charges in question ('Automated Manifest System (AMS) Charge,' 'Chassis Usage Charges,' 'ISPS- Int'l Ship and Port Security Charges,' 'ISD Handling Charges,' 'Traffic Mitigation {sic} fee,' 'CTF- Clean Truck Fee,' and 'Documentation Charges') listed within the Descartes quotes used as a surrogate to value ocean freight are unique to ocean freight or are related to the inland movement of goods and thus may be potentially double-counted between the ocean freight SV and the separate Descartes fee schedule used to value U.S. inland freight expenses. In order to determine whether any of the aforementioned fees listed in the ocean freight quotes overlap with the U.S. inland freight SV, it is first necessary to examine the U.S. inland freight SV source information to determine whether any such component charges explicitly overlap with those listed in ocean freight. However, upon review of the record, we note that the inland freight SV source information consists of only a general fee schedule of estimated truck freight costs from port to specific destinations in the United States; the inland freight information does not break out the specific components underlying the charges comprising the values used for the U.S. inland freight surrogate value.³⁵ Given this, Commerce is applying a conservative presumption and removing any expenses from the ocean freight calculation where record information suggests those expenses may be related to the inland movement of goods and, thus, potentially double-counted.

As an initial matter, in examining each of the 24 ocean freight price quotes used to calculate the ocean freight SV, we note that four of the seven expenses under consideration (*i.e.*,

³⁵ See Preliminary SV Memorandum at Attachment X.

Clean Truck Fee, Chassis Usage Charges, ISPS, and ISD Handling Charges) are listed on only a *single* quote provided to estimate East Coast shipping expenses for March 2013.³⁶ The expenses listed on this quote do not appear to be customary with respect to those listed in the dataset on the whole – though the dataset remains robust regardless of the inclusion of this single quote (*i.e.*, otherwise containing data from 23 quotes). We find that, given the degree of ambiguity which remains with respect to classifying the individual surcharges within the ocean freight SV as related to the inland transport of goods or not, and to determine whether any such expenses may be included within the non-descript inland freight SV, it is appropriate to not rely on this information. As such, Commerce has removed the March 2013 price quote from the calculation of the ocean freight SV, thus rendering the classification of the Clean Truck Fee, Chassis Usage Charges, ISPS, and ISD Handling Charges moot, consistent with the Court’s directive to ensure that these costs are not double-counted between ocean freight (based on the Descartes quotes) and U.S. inland freight (based on the Descartes price lists).³⁷

As a result, only three charges listed within the ocean freight quotes remain for consideration with respect to whether they are properly classified as ocean freight surcharges or are related to the inland movement of goods within the U.S. border: AMS Charges, Documentation Charges, and Traffic Mitigation fees. Our analysis of each follows, below:

³⁶ See GTC April 14, 2014 SV at Exhibit 8.

³⁷ See GTC’s Draft Results Analysis and SV Memo at 4-5.

a. *AMS Charges*

As established on the record of the prior *China Mfr. Alliance I Remand Redetermination*, the AMS Charge is a cost associated with the use of the Automated Manifest System (AMS).³⁸

According to the Descartes logistics and supply chain glossary, the AMS:

“handles manifest information provided by the carrier ... when the merchandise can be transported from the port of entry... Vessel AMS allows participants to transmit manifest data electronically prior to vessel arrival. Customs can then determine in advance whether the merchandise merits examination or immediate release. Upon receiving notification from Customs, the carrier can make decisions on staging cargo and the importer can arrange for examination, release, and distribution of the merchandise.”³⁹

Accordingly, in the *China Mfr. Alliance I Remand Redetermination* we stated that “{w}e find that this cost is an ocean freight expense related to arrival at the destination port, and therefore not covered by Doing Business.”⁴⁰ We continue to determine that this cost is an ocean freight expense related to arrival at the destination port, and find no evidence that this expense relates to the inland movement of freight within the U.S. border that would reasonably be included as a component of the inland freight SV. Therefore, where relevant, we continue to include the AMS Charge in our ocean freight surrogate value.

b. *Documentation Charges*

With respect to the documentation charges listed on approximately half of the Descartes

³⁸ See *China Mfr. Alliance I Remand Redetermination* at 15-16; see also GTC’s letter, “GTC’s Factual Rebuttal Information: Remand Redetermination pursuant to Litigation in Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China,” dated May 8, 2017 at Exhibit 2 (GTC’s NFI Submission).

³⁹ See Commerce’s Draft Redetermination Pursuant to Ct. Remand at Attachment 2, *China Manufacturers Alliance, LLC et al. v. United States*, Consol. Court No. 15-00124, Slip Op. 17-12 (CIT Feb. 6, 2017) (Draft Results of First Remand Redetermination); see also GTC’s NFI Submission at Exhibit 2.

⁴⁰ See Draft Results of First Remand Redetermination at 34 (citing Petitioners’ RFI Submission at Attachment 1 at 7); see also letter from petitioners, “*China Manufacturing Alliance, LLC, et al. v. United States*: Consol. Court No. 15-00124; Slip Op. 17-12 (CIT 2017): Titan and USW’s Comments on Draft Redetermination,” dated May 12, 2017 at 9 (Petitioner Draft Remand Comments).

ocean freight quotes in question, in the *China Mfr. Alliance I Remand Redetermination*, we noted the following:

“Ocean carriers, like Descartes, require paperwork unique to their services and charge fees to create and process those documents. Though a bill of lading is created by the freight forwarder, ocean carriers are required to create a master bill of lading to cover all containers aboard their ships. The remand record also shows that ocean carriers like Descartes have document charges related to U.S. destination document fees... {as such, these expenses may} {r}easonably be attributed to costs associated with ocean freight.”⁴¹

We continue to find that the Documentation Charges can reasonably be attributed to costs associated with ocean freight and find no evidence that this expense relates to the inland movement of freight within the U.S. border that would reasonably be included as a component of the inland freight SV. Thus, we continue to include the Documentation Charges in the international freight surrogate value.⁴²

c. Traffic Mitigation Fees

In the prior *China Mfr. Alliance I Remand Redetermination* we determined that “this cost is a U.S. port-specific charge related to U.S. truck freight.”⁴³ The record shows that the Traffic Mitigation Fee (listed as “Traffic Mitigation{sic} Fee” on the quote) is not an expense related to on-ocean services, but rather a post-ocean pass-through fee specific to the ports of Los Angeles and Long Beach.⁴⁴ Specifically, record evidence provided in the prior remand describes this as a fee charged to truck freight carriers upon pick-up of cargo from the port, to fund operations of the port to allow for off-peak hour pick-up of freight from the ports of Los Angeles and Long Beach to mitigate traffic congestion.⁴⁵ Therefore, record evidence suggests that this charge is

⁴¹ See letter from the petitioner, “*China Manufacturing Alliance, LLC, et al. v. United States*: Consol. Court No. 15-00124; Slip Op. 17-12 (CIT 2017): Titan and USW’s Remand Factual Submission,” dated May 8, 2017 at Attachment 4 (Petitioners’ NFI Submission).

⁴² See GTC’s Draft Results Analysis and SV Memo at 4, Attachment 1.

⁴³ See Petitioners’ NFI Submission at Attachment 4.

⁴⁴ *Id.*

⁴⁵ *Id.*

reasonably attributable to U.S. inland freight expenses. Accordingly, applying a conservative presumption, we have removed Traffic Mitigation Fees from the surrogate value for international freight.⁴⁶

D. COMMENTS FROM INTERESTED PARTIES

Commerce released the draft remand results on March 21, 2019.⁴⁷ On March 28, 2019, GTC submitted comments regarding Commerce's draft remand results.⁴⁸

GTC's Comments

- The CIT in its opinion ordered that Commerce: ““must take the appropriate corrective action to remove from the calculation of GTC’s margin its downward EP and CEP adjustments for VAT””; and ““must ensure that no costs are double counted either as between (1) brokerage and handling (based on the Doing Business report) and ocean freight (based on the Descartes quotes), or (2) ocean freight (based on the Descartes quotes) and U.S. inland freight (based on the Descartes price lists).”” Commerce’s Second Draft Remand properly complied with the CIT’s instructions.⁴⁹

No other interested parties commented on Commerce’s Second Draft Redetermination.

Commerce’s Position: We agree with GTC. In accordance with the Court’s order, we have (1) under protest, recalculated EP and CEP for GTC by removing the downward adjustments for irrecoverable VAT from the calculation of GTC’s weighted-average dumping margin; and (2) ensured that no costs were double-counted between the underlying SV information used to value

⁴⁶ *Id.*

⁴⁷ See Draft Results of Redetermination Pursuant to Court Remand, *China Manufacturing Alliance, LLC, et al. v. United States*, Consol. Court No. 15-00124; Slip Op. 19-7, dated March 21, 2019.

⁴⁸ See GTC’s March 28, 2019 Comments on the Draft Remand Redetermination.

⁴⁹ *Id.* at 2.

Chinese brokerage and handling expenses and that used to value ocean freight expenses, or between the ocean freight SV and the information used to value U.S. inland freight expenses, in calculating GTC's margin.

E. FINAL RESULTS OF REDETERMINATION

These final remand results have resulted in a weighted-average dumping margin of 4.59 percent for GTC.

4/16/2019

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Signed by: JEFFREY KESSLER