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Remand
Slip Op. 23-75
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China Manufacturing Alliance, LLC, et al. v. United States
Consol. Court No. 15-00124; Slip Op. 23-75 (CIT 2023)
Certain New Pneumatic Off-The-Road Tires from the People's Republic Of China

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

I. SUMMARY

The U.S. Department of Commerce (Commerce) prepared these final results of redetermination in accordance with the May 16, 2023, remand order of the U.S. Court of International Trade (the Court or CIT), in *China Manufacturers Alliance, LLC et al. v. United States*, Consol. Court No. 15-00124, Slip Op 23-75 (CIT 2023) (*Remand Order*). These final results of redetermination 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 *Remand Order* effectuates the mandate of the June 10, 2021, decision from the Court of Appeals for the Federal Circuit (Federal Circuit) in *China Manufacturers Alliance, LLC et al. v. United States*, 1 F.4th 1028 (Fed. Cir. 2021) (*China Mfr. Alliance IV*), wherein the Federal Circuit reversed and remanded the CIT's prior decision in: (1) *China Mfr. Alliance I*, in which

[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*).

the CIT found that Commerce had to assign mandatory respondent Double Coin Holdings Ltd. (Double Coin) a margin based exclusively on Double Coin's own information, despite Double Coin being found to be part of the non-market economy (NME) entity and assigned the applicable 105.31 percent China-wide entity rate in the *Final Results* and *Amended Final Results*,[2] as well as; (2) the CIT's decision in *China Mfr. Alliance II* to deny Commerce's request for a motion for a partial remand to revisit the issue of the margin calculated for Double Coin in light of the Federal Circuit's decision regarding the China-wide entity in *Diamond Sawblades*,[3] which specifically identified the *China Mfr. Alliance I* decision as incompatible with the practice of applying the NME presumption to companies which fail to rebut the presumption of government control.[4]

Specifically, in *China Mfr. Alliance IV*, the Federal Circuit reversed the CIT's distinction between the facts of the underlying review and the *Diamond Sawblades* decision and resulting finding regarding the inapplicability of the *Diamond Sawblades* decision as a basis to deny Commerce's motion for partial remand in *China Mfr. Alliance II*, instead agreeing with Commerce that there was no material difference between the record upon which Commerce established its China-wide rate in the two cases.[5] Further, the Federal Circuit confirmed essential aspects of the existing NME-entity practice and confirmed that Commerce may apply the country-wide NME entity rate to a respondent that cooperated with an investigation or review

[2] *See China Manufacturers Alliance, LLC et al. v. United States,* 205 F. Supp. 3d 1325 (CIT 2017) (*China Mfr. Alliance I*).
[3] *See Diamond Sawblades Mfrs. Coal. v. United States*, 866 F.3d 1304 (Fed. Cir. 2017), at 1313 n.6 (*Diamond Sawblades*).
[4] *See China Manufacturers Alliance, LLC et al. v. United States,* 357 F. Supp. 3d 1364 (CIT 2019) (*China Mfr. Alliance II*).
[5] *See China Mfr. Alliance IV* at 11, n.6 ("{W}e disagree with the Trade Court that the non-cooperation of some identified portion of the PRC-wide entity with the administrative review on appeal was a predicate to our decision in *Diamond Sawblades*, and we accordingly disagree with the Trade Court that Diamond Sawblades can be distinguished from this case on that ground.").

but fails to rebut the presumption of government control, and may do so regardless of whether other members of the NME-wide entity are identified by name and subject to the administrative review at issue.[6] Therefore, the Federal Circuit found Commerce's application of the 105.31 percent China-wide entity rate to Double Coin in the *Final Results* and *Amended Final Results* was not contrary to law and was reasonable on the facts of the case. In doing so, the Federal Circuit overturned the CIT's final judgement in *China Mfr. Alliance III*,[7] which had sustained Commerce's application of the 0.14 percent margin to Double Coin in the *First Remand Redetermination*[8] resulting from the CIT's remand directive in *China Mfr. Alliance I* and subsequent denial of Commerce's motion requesting a partial voluntary remand in *China Mfr. Alliance II*.[9]

In the *Remand Order*, the CIT first examines the scope of the mandate of the Federal Circuit's *China Mfr. Alliance IV* opinion to determine whether any issues remain to be adjudicated, *i.e.*, whether the *China Mfr. Alliance IV* ruling definitively resolved Double Coin's claims that Commerce erred in finding that Double Coin failed to rebut the presumption of Chinese government control over the company's export activities.[10] The CIT finds that, though the Federal Circuit is explicit that the application of the 105.31 percent China-wide entity rate to Double Coin in the *Final Results* and *Amended Final Results* was not contrary to law and was

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[6] *Id.* at 18 ("Because the conduct of members of a PRC-wide entity is not a condition necessary to sustain an AFA-based PRC-wide entity rate for a cooperating mandatory respondent who joins the PRC-wide entity during a review, this case cannot be distinguished from *Diamond Sawblades*. As we perceive no material difference between the record upon which Commerce established its PRC-wide rate in the two cases, we conclude that Commerce was within the law in assigning the 105.31% PRC-wide entity rate to Double Coin.").

[7] *See China Manufacturers Alliance, LLC et al. v. United States*, Consol. Court No. 15–00124; Slip Op. 19–115 (CIT 2019) (*China Mfr. Alliance III*), and resulting *Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review*, 84 FR 55553 (October 17, 2019) (*Timken Notice*).

[8] *See Final Results of Redetermination Pursuant to Remand*, *China Manufacturing Alliance, LLC, et al. v. United States*, Court No. 15–00124, Slip Op. 17–12 (CIT 2017), dated June 21, 2017 (*First Remand Redetermination*), available at https://access.trade.gov/resources/remands/17-12.pdf.

[9] *See China Mfr. Alliance IV* at 20.

[10] *See Remand Order* at 3.

reasonable on the facts of the case, the Court agrees with Double Coin that it had not yet reached the merits of Double Coin's substantive challenge to the question of whether Commerce erred in finding that Double Coin failed to rebut the presumption of Chinese government control.[11] On this sole remaining issue, the CIT concludes that Commerce's determination that Double Coin failed to rebut the presumption of government control is supported by substantial record evidence, specifically that Double Coin failed to demonstrate that its board and management were free from influence by its state-controlled parent company.[12] Having permissibly found that Double Coin failed to rebut the presumption of government control over export functions, the CIT explicitly directs Commerce to reach a new determination on remand, which must effectuate the mandate of the Federal Circuit's *China Mfr. Alliance IV* ruling by assigning Double Coin the 105.31 percent China-wide rate.[13]

All issues otherwise raised in litigation and applicable to the other mandatory respondent in the underlying review, Guizhou Tyre Co., Ltd. and Guizhou Tyre Export and Import Co., Ltd. (collectively GTC), have been resolved in prior remand segments. Specifically, in *China Mfr. Alliance III*, the CIT sustained: 1) Commerce's determination 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 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;[14] and 2) Commerce's determination in the *China Mfr. Alliance II Remand*

[11] *Id.* at 4-6.
[12] *Id*. at 6-14.
[13] *Id*. at 14-15.
[14] *See First Remand Redetermination*; *see also China Mfr. Alliance III*; and *Timken Notice*.

Redetermination to recalculate export price and constructed export price for GTC without making deductions for irrecoverable value added taxes and adjustment to GTC's brokerage and handling and ocean freight costs for certain double-counted expenses.[15] Therefore, the Federal Circuit's decision in *China Mfr. Alliance IV* reverses the CIT's prior determination only with respect to the appropriate rate applied to Double Coin, but does not reverse the CIT's final judgment in *China Mfr. Alliance III* sustaining the changes to GTC's margin calculation reflected in the *First* and *Second Remand Redetermination*s and reflected in the *Timken Notice*.

II. FINAL RESULTS OF REDETERMINATION

The explicit directive of the *Remand Order* states that "Commerce must issue a new determination upon remand. That determination must effectuate the mandate of the Court of Appeals in CMA IV by assigning Double Coin the PRC wide rate of 105.31…. ORDERED that Commerce shall issue new determination upon remand that assigns Double Coin the PRC-wide rate of 105.31%."[16] Accordingly, in compliance with the CIT's *Remand Order* and Federal Circuit's determination in *China Mfr. Alliance IV*, we determine the China-wide rate of 105.31 percent to be the final dumping margin applicable to Double Coin.

6/12/2023

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Signed by: LISA WANG

Lisa Wang
Assistant Secretary
for Enforcement and Compliance

[15] *See Final Results of Redetermination Pursuant to Court Remand*, *China Manufacturing Alliance, LLC, et al. v. United States*, Court No. 15-00124, Slip Op. 19-7 (CIT 2019), dated April 16, 2019 (*Second Remand Redetermination*) available at https://access.trade.gov/resources/remands/19-7.pdf; *see also China Mfr. Alliance III*; and *Timken Notice*.
[16] *See Remand Order* at 15.