C-570-017
New Shipper Review
Shandong Xinghongyuan
12/01/2014 – 01/31/2016
**Public Document**
E&C/Office VII: KMW

DATE: June 20, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Passenger Vehicle and Light Truck Tires from the People's Republic of China: Issues and Decision Memorandum for the Final Rescission of the 2014-2016 Countervailing Duty New Shipper Review

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## I. SUMMARY

In response to a request from Shandong Xinghongyuan Tire Co., Ltd. (SXT),[1] the Department of Commerce (the Department) is conducting a new shipper review (NSR) of the countervailing duty (CVD) order on passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (PRC). The period of review (POR) is December 1, 2014, through January 31, 2016. On January 31, 2017, the Department published its preliminary determination to rescind this NSR because SXT did not satisfy the statutory and regulatory requirements to request an NSR.[2] Specifically, we found that SXT inaccurately certified its request for review by failing to disclose its affiliation with Xingyuan Tires Group Co., Ltd. (Xingyuan Group), which exported subject merchandise to the United States during the period of investigation (POI) (*i.e.*, January 1, 2013, through December 31, 2013).[3] As discussed below, the Department has analyzed all arguments raised since the *Preliminary Rescission* and continues to find that SXT did not satisfy the requirements to request an NSR. Therefore, for purposes of these final results,

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[1] *See* Letter from SXT, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: New Shipper Review Request," February 25, 2016 (Request for Review).
[2] *See Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Rescission of 2014-2016 Countervailing Duty New Shipper Review*, 82 FR 8825 (January 31, 2017) (*Preliminary Rescission*), and accompanying Department Memorandum, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Decision Memorandum for the Preliminary Rescission of the 2014-2016 Countervailing Duty New Shipper Review," January 23, 2017 (Preliminary Decision Memorandum).
[3] *See* Preliminary Decision Memorandum at 3-8.

we hereby adopt the analysis and findings contained in the *Preliminary Rescission* and, for the reasons discussed therein,[4] as well as those discussed below, rescind our review of SXT. Below is the complete list of issues for which we received comments and rebuttal comments by parties:

**Issue 1:** Acceptance of Unverified Submissions as "Complete and Accurate"
**Issue 2:** Evidence of Xingyuan Group's Exports During the POI

## II. BACKGROUND

As noted above, the Department published its *Preliminary Rescission* on January 31, 2017.[5] The Department subsequently received a case brief from SXT.[6] United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, the petitioner in the CVD investigation, submitted a rebuttal brief.[7] On April 12, 2017, the Department extended the deadline for these final results until June 22, 2017.[8]

## III. SCOPE OF THE ORDER

The scope of this order is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by this order may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:
P - Identifies a tire intended primarily for service on passenger cars
LT- Identifies a tire intended primarily for service on light trucks

Suffix letter designations:
LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service.

All tires with a "P" or "LT" prefix, and all tires with an "LT" suffix in their sidewall markings are covered by this order regardless of their intended use.

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[4] *See Preliminary Rescission*, 82 FR at 8825; *see also* Preliminary Decision Memorandum at 3-8.
[5] *See Preliminary Rescission*, 82 FR at 8825.
[6] *See* Letter from SXT, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Case Brief," March 2, 2017 (SXT Case Brief).
[7] *See* Letter from the petitioner, "Rebuttal Case Brief Submitted on Behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (USW)," March 15, 2017 (Petitioner Rebuttal Brief).
[8] *See* Department Memorandum, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Extension of Deadline for Final Results in Countervailing Duty New Shipper Review," April 12, 2017.

In addition, all tires that lack a "P" or "LT" prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book*, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope.

Specifically excluded from the scope of this order are the following types of tires:

(1) racing car tires; such tires do not bear the symbol "DOT" on the sidewall and may be marked with "ZR" in size designation;
(2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book*;
(3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;
(4) non-pneumatic tires, such as solid rubber tires;
(5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in Table PCT-1B ("T" Type Spare Tires for Temporary Use on Passenger Vehicles) of the *Tire and Rim Association Year Book*,
(b) the designation "T" is molded into the tire's sidewall as part of the size designation, and,
(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by *Tire and Rim Association Year Book*, and the rated speed is 81 MPH or a "M" rating;

(6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following conditions:

(a) the size designation molded on the tire's sidewall is listed in the ST sections of the *Tire and Rim Association Year Book*,
(b) the designation "ST" is molded into the tire's sidewall as part of the size designation,
(c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is "For Trailer Service Only" or "For Trailer Use Only",
(d) the load index molded on the tire's sidewall meets or exceeds those load indexes listed in the *Tire and Rim Association Year Book* for the relevant ST tire size, and
(e) either

(i) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by *Tire and Rim Association Year Book*, and the rated speed does not exceed 81 MPH or an "M" rating; or
(ii) the tire's speed rating molded on the sidewall is 87 MPH or an "N" rating, and in either case the tire's maximum pressure and maximum load limit are molded on the sidewall and either

(1) both exceed the maximum pressure and maximum load limit for any tire of the same size designation in either the passenger car or light truck section of the *Tire and Rim Association Year Book*; or
(2) if the maximum cold inflation pressure molded on the tire is less than any cold inflation pressure listed for that size designation in either the passenger car or light truck section of the *Tire and Rim Association Year Book*, the maximum load limit molded on the tire is higher than the maximum load limit listed at that cold inflation pressure for that size designation in either the passenger car or light truck section of the *Tire and Rim Association Year Book*;

(7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the *Tire and Rim Association Year Book,*
(b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is "Not For Highway Service" or "Not for Highway Use",
(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the *Tire and Rim Association Year Book*, and the rated speed does not exceed 55 MPH or a "G" rating, and
(d) the tire features a recognizable off-road tread design.

The products covered by the order are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

## IV. DISCUSSION OF THE ISSUES

### Issue 1: Acceptance of Unverified Submissions as "Complete and Accurate"

*Comments from Interested Parties*

SXT claims that, pursuant to the Department's findings in prior determinations, "{i}n the absence of verification, the Department must accept SXT's submissions as complete and accurate."[9] Accordingly, because the Department did not verify SXT's questionnaire responses,

[9] *See* SXT Case Brief at 1 (citing *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China*, 80 FR 51775 (August 26, 2015) (*Boltless Steel Shelving Units from the PRC*), and accompanying Department Memorandum, "Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Issues and Decision Memorandum for the Final Determination," April 14, 2015 (Boltless Steel Shelving Units IDM)).

SXT argues that all statements/information presented therein (*e.g.*, assertions that SXT is not affiliated with Xingyuan Group) must be accepted as fact in favor of conflicting statements/evidence placed on the record by the petitioner and the Department.[10]

The petitioner, however, asserts that verification is only a statutory requirement in investigations.[11] They state that the Department is "not required to 'verify the portion of the information a respondent may self-select,' as this would allow manipulation" of results.[12] The petitioner argues that, because we found SXT's certifications/responses to be substantially incomplete regarding affiliation, the Department is not required to conduct a verification of that partial affiliation information.[13]

*Department Position*

The Department finds that verification is not required in this proceeding and, furthermore, that, despite the decision not to verify, we are neither required to accept information provided by SXT as reliable evidence, nor precluded from relying on other evidence available on the record that conflicts with that provided by SXT. As noted by the petitioner, the Department is not required to conduct verification in all reviews.[14] Section 782(i) of the Act states:

> The administering authority shall verify all information relied upon in making
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> (1) A final determination in an investigation,
> (2) A revocation under section 751(d), and
> (3) A final determination in a review under section 751(a), if
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> (A) Verification is timely requested by an interested party as defined in section 771(9)(C), (D), (E), (F), or (G), and
> (B) No verification was made under this subparagraph during the 2 immediately preceding reviews and determinations under section 751(a) of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown.

The Department's regulations further specify that we will verify information relied upon in:

> (i) A final determination in a continuation of a previously suspended countervailing duty investigation (section 704(g) of the Act), countervailing duty investigation, continuation of a previously suspended antidumping investigation (section 705(a) of the Act), or antidumping investigation;

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[10] *Id*.
[11] *See* Petitioner Rebuttal Brief at 6 (citing section 782(i) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.307(b)(1)(iv)).
[12] *Id.,* at 8.
[13] *Id.*
[14] *Id.,* at 6.

(ii) The final results of an expedited antidumping review;
(iii) A revocation under section 751(d) of the Act;
(iv) The final results of an administrative review, new shipper review, or changed circumstances review, if the {Department} decides that good cause for verification exists; and
(v) The final results of an administrative review if:

(A) A domestic interested party, not later than 100 days after the date of publication of the notice of initiation of review, submits a written request for verification; and
(B) The {Department} conducted no verification under this paragraph during either of the two immediately preceding administrative reviews.[15]

This NSR is being conducted is accordance section 751(a)(2)(B) of the Act. No interested party made a timely request for verification in this proceeding. Furthermore, the Department conducted a verification of information submitted by the respondents in the CVD investigation that preceded issuance of the order,[16] and there have been no subsequent reviews or final determinations under section 751(a) of the Act.[17] Therefore, verification of SXT's questionnaire responses is not required under the relevant laws and regulations.

Citing *Boltless Steel Shelving Units from the PRC*, SXT asserts that the Department must accept any unverified information as complete and accurate.[18] In that proceeding, the Department accepted unverified statements of non-use made by the Government of the PRC (the GOC) as complete and accurate because non-use of the particular program had already been separately verified at the respondent companies.[19] The circumstances in this NSR are different. In this case, there is no separately verified information that the Department can rely upon because, consistent with section 782(i) of the Act, the Department did not verify SXT's questionnaire responses. In *Boltless Steel Shelving Units from the PRC*, the Department accepted the GOC's unverified statements because the statements were in harmony with information reported by, and verified at, the respondent companies. Therefore, in contrast to this proceeding, the *Boltless Steel Shelving Units from the PRC* record did not include evidence contradicting the GOC's statements of non-use. Reliable information on the record of this review (*e.g.*, records maintained by the Ningde Municipal People's Government)[20] supports the Department's finding

[15] *See* 19 CFR 351.307(b)(1).
[16] *See Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 84888 (June 18, 2015), and accompanying Department Memorandum, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China," June 11, 2015, at 3.
[17] The Department is conducting the first administrative review of the CVD order on passenger tires from the PRC. The preliminary results are due no later than August 31, 2017.
[18] *See* SXT Case Brief at 1.
[19] *See* Boltless Steel Shelving Units IDM at Comment X.
[20] *See* Letter from the petitioner, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (C-570-017), New Shipper Review (Shandong Xinghongyuan): Petitioner's Rebuttal Factual Information and Comments on SXT's Response to Section III Identifying Affiliated Companies," August 11, 2016 (Petitioner

that SXT submitted an inaccurate certification of non-affiliation, thereby invalidating SXT's initial request for review. Because it is the Department's duty to weigh the record evidence,[21] the Department is not required to accept SXT's claims, many of which are not supported by underlying documentation, over conflicting information, which is supported by, *inter alia*, official government publications and SXT's own statements.[22] Therefore, we find that the Department properly weighed the available record evidence, reasonably concluded that SXT's certification and questionnaire responses were unreliable, and is properly rescinding this NSR.

**Issue 2: Evidence of Xingyuan Group's Exports During the POI**

*Comments from Interested Parties*

SXT claims that the Department has not pointed to any reliable evidence that Xingyuan Group exported subject merchandise to the United States during the "relevant period."[23] The petitioner, however, notes that the Department supported its finding that the Xingyuan Group exported passenger tires to the United States during the POI by placing U.S. Customs and Border Protect (CBP) entry data from the underlying CVD investigation on the record of this review.[24]

*Department Position*

The Department finds that the CBP entry data from the underlying CVD investigation, which were placed on the record of this NSR, is reliable evidence from an official source and, therefore, that Xingyuan Group exported subject merchandise to the United States during the POI. In its request for review, pursuant to 19 CFR 351.214(b)(2)(iii)(A), SXT certified that neither it nor its affiliates exported passenger tires to the United States during the POI.[25] As explained in the *Preliminary Rescission*, and affirmed in these final results, the Department has determined that SXT is affiliated with Xingyuan Group.[26] The CBP entry data, which were relied on for purposes of respondent selection in the CVD investigation,[27] clearly indicate that the Xingyuan Group exported passenger tires to the United States between January 1, 2013, and December 31,

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Comments on Affiliation Questionnaire Response), at Attachment 4; *see also* Preliminary Decision Memorandum (summarizing record evidence indicating that SXT is affiliated with Xingyuan Group).

[21] *See*, *e.g.*, *MacLean-Fogg Co. v. United States*, 853 F. Supp. 2d 1336, 1342 (CIT 2012).

[22] *See* Request for Review at 5; *see also* Letter from SXT, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Response to Section III Identifying Affiliated Companies," July 27, 2016, at 4 and Exhibit 1; Petitioner Comments on Affiliation Questionnaire Response; Letter from SXT, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Response to Section III of the CVD Questionnaire," August 23, 2016, at 4; Letter from the Department, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Supplemental Countervailing Duty Questionnaire in New Shipper Review," September 2, 2016, at Exhibits 1-2.

[23] *See* SXT Case Brief at 2.

[24] *See* Petitioner Rebuttal Brief at 8.

[25] *See* Request for Review at Exhibit 2. We note that, under the Department's regulations, the relevant period is the POI of the underlying CVD investigation, not the POR specific to this NSR.

[26] *See* Preliminary Decision Memorandum at 5. SXT has not directly challenged the Department's preliminary finding that SXT is affiliated with Xingyuan Group. Therefore, because the Department has adopted its preliminary analysis for purposes of these final results, we continue to find that SXT is affiliated with Xingyuan Group.

[27] *See* Department Memorandum, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Omission of Appendix to Preliminary Decision Memorandum and Extension of Briefing Schedule," March 6, 2017, Appendix at Attachment.

2013.[28] Therefore, SXT's claims that there is no evidence of such export activity from official sources is without merit. As noted by the Court of International Trade, "CBP data are presumptively reliable" as evidence of entry volumes during the relevant period.[29] SXT has not cited any record evidence calling the reliability of the CBP entry data into question, nor has SXT otherwise demonstrated that the CBP entry data are inaccurate. Therefore, as stated above, the Department finds that the CBP entry data are reliable and that the Department properly relied upon them in the *Preliminary Rescission*,[30] and we continue to rely upon the CBP entry data for purposes of these final results.

## V. RECOMMENDATION

Based on the analysis of the comments received, we recommend approval of the findings described above and, accordingly, final rescission of this NSR. If the positions are accepted, we will publish notice of these final results in the *Federal Register*.

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Agree Disagree

6/20/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

[28] *Id*.
[29] *See Ad Hoc Shrimp Trade Action Comm. v. United States*, 791 F. Supp. 2d 1327, 1332 (CIT 2011).
[30] *See* Preliminary Decision Memorandum at 3.