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Trade Briefs

Court of International Trade Ruling on Application of CVD Laws to China

The Court of International Trade (CIT) has issued a decision in the *GPX/Starbright* case that is a major development in trade remedy law. The CIT ruled that it was unlawful for the Commerce Department to impose countervailing duties (CVD) while simultaneously imposing antidumping (AD) duties based on the non-market economy (NME) methodology. Indeed, the Court also ruled that "Commerce's failure to address GPX's request for MOE status ... was arbitrary and capricious and unsupported by substantial evidence."

The CIT decision represents a major change in CVD law. Essentially, the CIT adopted the long-argued position of Chinese respondents (including BOFT) that it is unfair and unlawful for the Commerce Department to take this action. Indeed, the Court specifically ruled that Commerce must "forego imposition of CVDs on the merchandise at issue or adopt additional policies and procedures to adapt its NME AD and CVD methodologies to account for the imposition of CVDs."

The Court essentially made three specific rulings. First, the court found that the Commerce Department's new statutory interpretation that it was permitted to simultaneously impose CVD duties and AD duties using its NME methodology was "unreasonable" and therefore "unlawful." The court said, "Dual imposition of ADs and CVDs in NME countries has a high potential for double remedies." Also, the court found it "unreasonable for Commerce to require [plaintiff] GPX to submit specific evidence that a double remedy of a particular amount was imposed on its products when parallel NME AD and CVD procedures were utilized."

Second, the court found that Commerce's failure to address GPX's request for market oriented enterprise treatment because it had no policies, procedures or standards for evaluating MOE status was arbitrary and capricious and not supported by substantial evidence. The court said that "Commerce's failure to address GPX's request for MOE status ... was arbitrary and capricious and unsupported by substantial evidence." The court found that Commerce must "meaningfully address the issue" The court said that "if the CVD statute is being imposed in an NME situation, Commerce must modify its application of the NME AD statute, which it did not do."

Third, the court found that Commerce's adoption of a cut-off date was arbitrary and supported by substantial evidence. The court found the Department's application of its December 11, 2001, cut-of date to be both arbitrary and unsupported by substantial evidence. However, in doing so, Chief Judge Restani dramatically shifted the burden to the DOC to analyze and define what subsidies may exist in China while it is treated as an NME for AD purposes, in what sectors and at what point in time they may exist, and what methodologies may adequately measure them. Although the CIT's ultimate conclusion on this issue was to agree with an argument advanced by petitioners, the rationale that the CIT gave for its decision is completely consistent with the overall approach taken on the other issues. Essentially, the CIT rejected Commerce's argument that it should not have to undertake the hard work of figuring out how to impose CVDs against an NME country.

Remanding the case back to DOC is required based on long-standing Supreme Court precedent. Supreme Court precedent essentially requires that Commerce be given a chance to formally address the Court's decision. The CIT was very precise on what Commerce must do. Essentially, the CIT gave Commerce a choice: Stop imposing CVD law against China or change the NME AD methodology to reflect the application of CVD duties. The Court gave Commerce 90 days to respond to the Court's decision. (Normally, Commerce will request comments from parties during the remand time period.) All parties will then have an opportunity to make comments to the Court on what Commerce decides to do.

It is also possible that Commerce (or petitioners) will try to appeal directly to the Court of Appeals for the Federal Circuit, rather than undertake the remand. Given the importance of this decision, it is virtually certain that the final decision of the CIT after remand will be appealed to the Court of Appeals.

The change in application of CVD laws to China in 2006—the subject of this case—was an important development. Now, the Court's decision to reverse that application of CVD laws will play a strong role in shaping future developments on this issue. It is unlikely that this will end the application of both AD and CVD remedies against NMEs like China. Rather, the CIT is demanding a different method, one that is more fair to respondents. Commerce now has the burden of finding a new way to calculate subsidy margins. No longer can Commerce simply continue its policy of using surrogate countries for "comparable" data so that they can compensate for the lack of a market in NMEs.

Dumping Watch

Preliminary Results of Review of AD Order on Cut-to-Length Carbon-Quality Steel Plate from Korea

On September 24, the Department of Commerce (DOC) gave notice that it has reached preliminary results in the administrative review of the antidumping (AD) duty order on cut-to-length carbon-quality steel plate (CTL plate) from Korea. Also, the DOC gave notice that it was rescinding this administrative review in part.

On March 24, the DOC initiated this review with regard to Korean CTL plate at the request of interested parties. On September 24, the DOC gave notice that it had preliminarily determined that sales have been made below normal value by Hyosung Corporation (Hyosung), Hyundai Mipo Dockyard Co., Ltd. (Hyundai Mipo), and JeongWoo Industrial Machine Co., Ltd. (JeongWoo). The DOC calculated a margin of 32.70% for these three producers/exporters. Also, the DOC gave notice that it will rescind this review with respect to Daewoo International Corporation (Daewoo) because the DOC preliminarily determined that Daewoo had no shipments of subject merchandise during the period of review. The DOC will issue final results of this review within 120 days and will issue assessment instructions to Customs and Border Protection (CBP) within 15 days.

Initiation of CVD and AD Cases regarding Chinese Seamless Carbon and Alloy Steel Pipe

On September 22, the International Trade Commission (ITC) gave notice of initiation of a countervailing duty (CVD) investigation and an AD investigation into imports of certain seamless carbon and alloy steel standard, line, and pressure pipe from China. The ITC is initiating these investigations in response to a petition filed by two U.S. petitioners: U.S. Steel Corp. and V&M Star L.P. The ITC is required to reach preliminary determinations in both of these investigations within 45 days, or, in this case, by November 2, 2009. The ITC has scheduled a conference in connection with these investigations on October 7, 2009, at the ITC Building.

Federal Register Notices

International Trade Administration

[A-570-832] Pure Magnesium From the People's Republic of China: Extension of Time for the Final Results of the Antidumping Duty Administrative Review *74 FR 48904*, September 25, 2009.

[C-423-809] Stainless Steel Plate in Coils From Belgium: Extension of Time Limit for the Final Results of the Ninth Countervailing Duty Administrative Review *74 FR 48904*, September 25, 2009.

[A-552-801] Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limits for the Preliminary Results of the New Shipper Review *74 FR 48905*, September 25, 2009.

[A-570-890] Wooden Bedroom Furniture From the People's Republic of China: Final Results of New Shipper Review *74 FR 48905-48907*, September 25, 2009.

[A-570-909] Certain Steel Nails From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review *74 FR 48907-48908*, September 25, 2009.

[A-552-801] Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of New Shipper Review *74 FR 48908-48909*, September 25, 2009.

[A-580-836] Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Administrative Review in Part *74 FR 48716-48719*, September 24, 2009.

[A-421-811] Purified Carboxymethylcellulose From the Netherlands; Extension of Time Limit for Final Results of Antidumping Duty Administrative Review *74 FR 48715-48716*, September 24, 2009.

Exporters' Textile Advisory Committee; Notice of Open Meeting *74 FR 48723*, September 24, 2009.

[A-570-904] Certain Activated Carbon from the People's Republic of China: Notice of Rescission of Changed Circumstances Review *74 FR 48723-48724*, September 24, 2009.

[Application No. 84-20A12] Export Trade Certificate of Review *74 FR 48520-48521*, September 23, 2009.

[A-570-836] Notice of Amended Final Results of Antidumping Duty Administrative Review: Glycine from the People's Republic of China *74 FR 48223-48224*, September 22, 2009.

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part *74 FR 48224-48229*, September 22, 2009.

[C-580-862] Ni-Resist Piston Inserts from the Republic of Korea: Final Negative Countervailing Duty Determination *74 FR 48059-48061*, September 21, 2009.

International Trade Commission

[Investigation Nos. 701-TA-469 and 731-TA-1168 (Preliminary)] Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From China *74 FR 48292-48293*, September 22, 2009.

[Investigation Nos. 701-TA-460-461 (Final)] In the Matter of Ni-Resist Piston Inserts From Argentina and Korea; Notice of Commission Determination Not To Conduct a Portion of the Hearing in camera *74 FR 48099-48100*, September 21, 2009.

Office of the U.S. Trade Representative

[Docket No. USTR-2009-0022] Implementation of the U.S.-EC Beef Hormones Memorandum of Understanding *74 FR 48808-48811*, September 24, 2009.

Request for Public Comments To Compile the National Trade Estimate Report on Foreign Trade Barriers and Reports on Sanitary and Phytosanitary and Standards-Related Foreign Trade Barriers *74 FR 48811-48813*, September 24, 2009.

Request for Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act *74 FR 48622-48623*, September 23, 2009.

The Week Ahead

- The ITC will hold a hearing regarding five-year sunset reviews of AD and CVD orders on prestressed concrete steel wire strand from Brazil, India, Japan, Korea, Mexico, and Thailand.