

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-913]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Decision of the Court of International Trade Not in Harmony

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 1, 2010, the United States Court of International Trade ("CIT") sustained the second remand redetermination made by the Department of Commerce ("Department") pursuant to the CIT's remand of the final determination in the countervailing duty investigation on certain new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC"). See *GPX Int'l Tire Corp. v. United States*, Consol. Ct. No. 08-00285, Slip Op. 10-84 at *28 (Ct. Int'l Trade October 1, 2010) ("*GPX III*"). This case arises out of the Department's final determination in the countervailing duty ("CVD") investigation on OTR tires from the PRC. The final judgment in this case was not in harmony with the Department's July 2008 final determination.

DATES: *Effective Date:* October 12, 2010.

FOR FURTHER INFORMATION CONTACT:

Andrew Huston or Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482-4261 or (202) 482-1396, respectively.

SUPPLEMENTARY INFORMATION: In July 2008, the Department published a final determination in which it found that countervailable subsidies are being provided to producers/exporters of OTR tires from the PRC. See *Certain New Pneumatic Off-The-Road-Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) ("*Final Determination*"). As part of the *Final Determination*, the Department calculated a CVD rate of 14.00 percent for Hebei Starbright Tire Co., Ltd. ("Starbright"), 6.85 percent for Tianjin United Tire & Rubber International Co., Ltd. ("TUTRIC"), and 2.45 percent for Guizhou Tire Co., Ltd. ("GTC") and an all-others CVD rate of 5.62 percent. See *Final Determination*, 73 FR at 40483. On September 4, 2008, the Department published a CVD order on OTR tires

from the PRC. See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Countervailing Duty Order*, 73 FR 51627 (September 4, 2008).

Domestic interested party Bridgestone Americas, Inc. and Bridgestone Americas Tire Operations, LLC (collectively, "Bridgestone"), petitioners Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied and Industrial Service Workers International Union, AFL-CIO-CLC (collectively, "Titan"), interested party GPX International Tire Corporation, and respondent companies Starbright and TUTRIC each timely challenged various aspects of the *Final Determination* to the CIT. Among the issues raised before the Court were the Department's authority to apply the CVD law to the PRC while also treating the PRC as a non-market economy ("NME") country for antidumping ("AD") purposes and the Department's application of a cut-off date of December 11, 2001, the date of the PRC's accession to the World Trade Organization, for identifying and measuring subsidies in the PRC.

On September 18, 2009, the CIT remanded this matter to the Department either "to forego the imposition of CVDs on the merchandise at issue or * * * to adopt additional policies and procedures to adapt its NME AD and CVD methodologies to account for the imposition of CVD remedies on merchandise from the PRC." *GPX Int'l Tire Corp. v. United States*, Consol. Ct. No. 08-00285, Slip Op. 09-103 at *33 (Ct. Int'l Trade September 18, 2009) ("*GPX I*"). The CIT also ordered the Department, should it continue to impose CVD remedies, to "refrain from using a uniform cut-off date for identifying and measuring subsidies in the PRC while it remains a designated NME and must evaluate the specific facts of each subsidy to determine what kind of subsidy exists and whether it is measurable at a particular time in the PRC." *Id.*

On April 26, 2010, the Department issued an initial remand redetermination under protest in which it continued to impose CVD remedies upon imports of subject merchandise from the PRC, but determined, for certain of those imports, to offset those CVDs against calculated dumping margins. See *Remand Redetermination, GPX Int'l Tire Corp. v. United States*, Consol. Ct. No. 08-00285, dated April 26, 2010, at 7-11, 42-44. The Department also under protest refrained from using a uniform cut-off date for identifying and measuring subsidies in the PRC and instead evaluated the

specific facts of each subsidy to determine the nature of each subsidy and the point in time that each type of subsidy became measurable. *Id.* at 20-40, 51-53.

On August 4, 2010, the CIT ruled the above-described offset methodology to be unreasonable and inconsistent with the statute and ordered the Department "to forego the imposition of CVDs on the merchandise at issue." *GPX Int'l Tire Corp. v. United States*, Consol. Ct. No. 08-00285, Slip Op. 10-84 at *28 (Ct. Int'l Trade August 4, 2010) ("*GPX II*"). Accordingly, in a second remand redetermination filed with the CIT under protest on September 3, 2010, the Department excluded Starbright and TUTRIC from the CVD order, but continued to apply its revised approach to selecting the date on which to identify and measure subsidies adopted under protest in its initial remand redetermination with respect to GTC. See *Second Remand Redetermination, GPX Int'l Tire Corp. v. United States*, Consol. Ct. No. 08-00285, dated September 3, 2010, at 2-4. As a result, the Department calculated a CVD rate of 3.35 percent for GTC and an all-others CVD rate of 3.35 percent. *Id.* at 8. The CIT affirmed the Department's second remand redetermination on October 1, 2010. See *GPX III*, Slip Op. 09-112 at *3.

Timken Notice

In its decision in *Timken Co., v. United States*, 893 F. 2d 337, 341 (Fed. Cir. 1990) ("*Timken*"), the United States Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended ("the Act"), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's *GPX III* decision of October 1, 2010 constitutes a final decision of that court that is not in harmony with the Department's *Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's decision is not appealed or is affirmed on appeal, the Department will publish an amended final determination excluding OTR tires produced and exported by Starbright or TUTRIC from the countervailing duty order on OTR tires from the PRC and will issue

revised instructions to U.S. Customs and Border Protection.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: October 6, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XY43

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Assessment Process Webinars for Highly Migratory Species (HMS) Fisheries Sandbar, Dusky, and Blacknose Sharks; Webinars; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of addendum to a meeting notice for SEDAR 21 HMS of sandbar, dusky, and blacknose sharks assessment webinars.

SUMMARY: This notice updates information relative to the SEDAR 21 assessments of the HMS stocks of sandbar, dusky, and blacknose sharks will consist of a series of workshops and webinars: a Data Workshop, a series of Assessment webinars, and a Review Workshop. *See SUPPLEMENTARY INFORMATION.*

DATES: The SEDAR 21 Assessment Process I webinars will be held between September 14th and December 8th, 2010. *See SUPPLEMENTARY INFORMATION* for exact dates and times. **Note:** The schedule has been modified to add a webinar on October 22nd.

The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

Webinar	Date	Day	Time (Eastern)
1	September 14, 2010	Tuesday	10 am–2 pm
2	September 16, 2010	Thursday	10 am–2 pm
3	September 30, 2010	Thursday	1pm–5 pm
4	October 5, 2010	Tuesday	9:30 am–12:30 pm
5	October 8, 2010	Friday	10 am–2 pm
6	October 22, 2010	Friday	11 am–3 pm
7	October 26, 2010	Tuesday	10 am–2 pm
8	October 28, 2010	Thursday	10 am–2 pm
9	November 2, 2010	Tuesday	10 am–2 pm
10	November 4, 2010	Thursday	10 am–2 pm
11	November 8, 2010	Monday	10 am–2 pm
12	November 10, 2010	Wednesday	10 am–2 pm
13	December 8, 2010	Wednesday	10 am–2 pm

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (*See Contact Information Below*) to request an invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Julie A Neer, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone: (843) 571-4366; e-mail: Julie.neer@safmc.net.

SUPPLEMENTARY INFORMATION: The original document published on August 26, 2010 (75 FR 52510). A meeting has been added to the agenda, therefore, we are publishing the document in its entirety.

The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for

determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing webinars and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA

Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 21 Assessment Process I webinar series:

Using datasets recommended from the Data Workshop, participants will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Meeting Schedule: Note that the schedule has been modified to add a webinar on October 22nd.