

**PASSENGER VEHICLE AND LIGHT TRUCK**

**TIRES FROM CHINA**

**Inv. Nos. 701-TA-522 and 731-TA-1258 (Final)**

**Hearing Testimony of Craig A. Lewis**

**June 9, 2015**

**CRITICAL CIRCUMSTANCES**

Good afternoon, Chairman Broadbent and commissioners. My name is Craig Lewis, and I am also a Partner at Hogan Lovells here today representing ITG Voma. It is a pleasure to be before the Commission.

I would like to briefly address the issue of critical circumstances. As you know, the Department of Commerce has made affirmative critical circumstances findings for certain, but not all, Chinese exporters in the antidumping and countervailing duty investigations. This means that the Commission must now make its own independent determination under the very high legal standard applicable to the Commission's injury proceeding. In particular, the Commission must determine whether the

subset of subject imports for which the Department made affirmative critical circumstances findings are likely to “undermine seriously the remedial effect” of a present injury finding.

The answer is an emphatic “no.”

To begin with, it is important to remember that the legal standard – “undermine seriously” – is very high. The finding required of the Commission is not whether this subset of imports will have “some” impact, or even a “material” impact on the remedial effect of any order that is issued – the effect must be to undermine the order **seriously**. This is a difficult standard to meet – and purposely so. U.S. law and WTO law strongly disfavor the retroactive application of dumping and subsidy measures to imports made prior to affirmative determinations of dumping or subsidization and injury. As a result, the Commission has very, very rarely issued affirmative critical circumstances in the past. Indeed, we are aware of only one such case in the last 14 years – a case involving dramatically different factual circumstances than are present here. The question thus is whether this case is one of those exceedingly rare circumstances supporting this extraordinary measure.

It is not. First, the U.S. industry is profitable, competitive, and is not vulnerable to injury. Indeed, because there is no basis for an affirmative determination of present injury, the issue of critical circumstances should not even be reached.

Second, the increase in the volume of imports, inventories, and other circumstances do not rise to anywhere near the level necessary to support such action.

Commerce made negative critical circumstances for the mandatory respondents that received individual rates in the antidumping and countervailing duty investigations. Thus, most of the largest exporters of subject merchandise from China in either investigation were found not to have massively increased exports during the relevant period. Affirmative findings were made only with respect to a subset of exporters.

Even for the subset of imports for which such affirmative determinations were made, the volume of imports did not increase by levels that are large enough to warrant an affirmative finding by the Commission. While I am constrained in my ability to publicly discuss

the specific factual data concerning the timing and volume of these imports, I urge the Commission to compare the increases at issue to those examined in prior investigations. I also urge the Commission to disregard Petitioners' attempts to inflate the import figures contained in the Staff Report based upon speculation. The tire executives quoted by Petitioners in their prehearing brief concerning Chinese imports do not provide any data for the Commission to consider. Color commentary is not the same as factual data.

As we documented in our prehearing brief, the volumes at issue, as reflected in the Prehearing Staff Report, are far below those found sufficient to support an affirmative determination in past cases and is quite small in comparison to a market of some 301 million tires.

Moreover, as ITG Voma demonstrated in its prehearing brief, even this increase in volume is exaggerated in appearance because the period examined coincides with a regular seasonal increase in tire imports in the second half of the year and also coincided with a major West Coast port strike.

The same can be said for end-of-period inventories which, although they have increased, have not increased to levels that could seriously undermine the remedial effect of the order, and are only marginally higher than historical levels.

Finally, and as thoroughly discussed by this panel, there is at best extremely limited competitive overlap between Chinese imports and U.S. products. As Petitioners freely admit, substitutability and the intensity of competition, has been considered an important “other factor” for consideration by the Commission. This factor, too, weighs strongly in favor of a negative critical circumstances determination.

In short, the factual circumstances presented in this case all point strongly to a negative finding of critical circumstances.