

It is but natural to ask what would be the immediate impact on tyre imports from China and other low-cost countries of the tariff legislation passed by the US Congress recently. **Marguerite Trossevin**, former Deputy Chief Counsel for Import Administration at the US Department of Commerce and a founding member of the law firm Jochum, Shore & Trossevin says in an interview the Congressional action meant that existing CVD duties on products from China would remain in place

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The passing of new legislation by the US Congress enabling the government to impose higher tariffs on goods from state-controlled economies that are said to subsidise exports to the US, would particularly impact the tyre sector. It comes in response to a federal appeals court ruling last December that the Commerce Department did not have the power to levy punitive countervailing duties (CVD), some of them as high as 210%, on imported China-produced off-the-road (OTR) and agricultural tyres.

US Vice President Joe Biden said that by passing the law, "Congress has taken a clear stand against the unfair trade practices that have put countless American jobs in jeopardy."

Explaining the legal implications, Marguerite Trossevin, former Deputy Chief Counsel for Import Administration at the US Department of Commerce and a founding member of the law firm Jochum, Shore & Trossevin, told **Polymers & Tyre Asia** said the Congressional action explicitly made the CVD law applicable to countries that the US treats as non-market economies (NMEs), such as China.

"The legislation just passed

TREAD LIGHTLY



Marguerite Trossevin

by Congress overturns the US Court of Appeals decision in GPX International Tires regarding the CVD on OTR tyres," she explained.

The court decision had come in a case filed in December 2008 in response to stiff import duty and CVD filed against a number of Chinese OTR tyre manufacturers. It had come to be known as GPX International, Hebei Starbright Tire Co Ltd and Tianjin United Tire & Rubber International Co Ltd. vs. the US, Titan Tire Corp, the United Steel Workers International and Bridgestone Americas Inc.

The present Congressional legislative action generally means that existing US CVD on products from China will remain in place. However, the situation regarding the CVD order on OTR tyres is less clear because Congress cannot overturn a final judgement by the Court of Appeals.

The Court of Appeals did rule in the GPX case; therefore, counsel in that case will likely argue the CVD order must be revoked.

However, the Commerce Department has filed a request for rehearing by the Court and it may argue that the GPX decision was not final and was covered by the legislation.

"I would note that the new legislation does not affect the special "safeguard" duties on passenger and light truck tyres from China, which were imposed under a different provision of the law," Trossevin said.

Divergent views

The National Association of Manufacturers has backed the tariff law and stated that failing to impose punitive measures would leave Americans "defenceless against rampant deep pocket Chinese."

Earlier last year Rubber Manufacturers Association had said that American jobs could not be saved because of tariffs on Chinese tyres as imports would shift to Thailand, Indonesia, Mexico and other low-cost countries.

Commenting on such divergent views, Trossevin said that in the case of the special safeguard duties on passenger and light truck tyres, the data do not indicate any significant benefits to the US industry.

She said imports have shifted to other countries and at the same time prices in the US have increased substantially, putting the burden on American consumers.

"I have not seen data on OTR tyres, but generally whether imposing CVD duties to offset subsidies will have any beneficial impact depends on a variety of factors, including how easy it is to shift suppliers. Basically, unless the duties reduce low-priced imports, the industry doesn't benefit," she explained.

Commenting on the perception that the present Congressional action was a political exercise and it had nothing to do with commerce or job creation, she said

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tyre prices had been increasing, and the special safeguard duties on passenger tyres were viewed by many as largely political.

"However, as I mentioned previously, the CVD legislation just passed by Congress addresses a different issue."

It deals with the much broader question of whether and how the issue of subsidised imports from China and other countries that the US treats as NMEs should be tackled.

There is nothing unique about imposing CVD on subsidised imports, and they are not generally controversial if done in accordance with World Trade Organisation rules.

"What has made the CVD issue so controversial in the case of China is Commerce Department's reversal of its longstanding position that the CVD law should not be applied to NMEs.

There is also the issue of the extent to which Commerce Department is "double-counting" subsidies in NME cases when it imposes both antidumping duties using the special NME surrogate method, and CVD duties.

WTO framework

When asked whether the latest Congressional legislation is in line with US commitments to WTO, Trossevin is of the view that the global body's rules have permitted the application of CVD on imports from China.

The Appellate Body has ruled, however, that the US may not double-count subsidies when it imposes both antidumping and CVD on the same product.

The Appellate Body also said that double-counting is "likely" to occur when the US uses the special surrogate method for calculating dumping in NME cases.

Although the new legislation includes provisions to address double-counting, it remains to be seen whether those provisions will enable the Commerce Department to comply with the obligation not to double-count.

"The battle over that issue is expected to continue both in the US courts and at the WTO," Trossevin thinks.

When asked how big is the Chinese subsidies that are said to facilitate underpricing of its exports, which could be an issue for WTO to look into, she said the subsidy rates calculated in the original OTR tyres investigation ranged from 2.45% to 14%. "We don't know yet what impact the WTO ruling may have on those rates."

She reminded that it is a presidential election year in the US and the US economic recovery is a central issue.

"In the current political climate there is a great deal of emphasis on tough enforcement of US trade laws, particularly where there is a perception that China's policies are harming US manufacturing and costing US jobs."

The overwhelming Congressional support for the GPX bill is evidence of that. So, the facts indicate that the US is more than ready to respond.

"The question is whether either country will benefit by going down that road. It may be prudent to tread lightly here," the trade law expert said. ▲