71 FR 64927, November 6, 2006

A-588-837
Reconsideration of Sunset Review
Public Document
ADCVD/2/KJ

DATE:

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for AD/CVD Operations
Import Administration

SUBJECT: Issues and Decision Memorandum for the Reconsideration of Sunset Review of the Antidumping Duty Order on Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan; Preliminary Results

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Summary

We have analyzed the responses of the interested parties in the reconsideration of sunset review of the antidumping duty order covering large newspaper printing presses and components thereof, whether assembled or unassembled ("LNPP"), from Japan. We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues raised for the preliminary results of this proceeding:

1. Whether the Department has the authority to conduct this reconsideration of the sunset review and to reinstate a revoked order.

2. Whether Goss International Corporation ("Goss") may be considered a domestic interested party for the purpose of this review.

3. The likelihood of continuation or recurrence of dumping.

4. The magnitude of the margins likely to prevail.

5. The effects and magnitude of alleged fraud by Tokyo Kikai Seisakusho, Ltd. ("TKS") in past administrative reviews.

6. Whether Mitsubishi Heavy Industries, Ltd. ("MHI") may be excluded from any reimposition of the order.

History of the Order

The Department of Commerce ("Department") published its amended final antidumping duty determination and order for LNPP from Japan in the Federal Register on September 4, 1996.[1] The rates published in that order were subsequently revised as follows.[2]

Mitsubishi Heavy Industries, Ltd.	59.67
Tokyo Kikai Seisakusho, Ltd.	51.97
All Others	55.05

Since the issuance of the antidumping duty order, the Department conducted three administrative reviews with respect to LNPP from Japan.[3] There have been two changed circumstances determinations concerning the LNPP antidumping order.[4] The Department calculated antidumping duty margins for respondent TKS of 0.00 percent in each of the three administrative reviews conducted under the order. Accordingly, the Department revoked the antidumping duty order under 19 CFR 351.222(b)(2)(ii) with respect to TKS because TKS sold the subject merchandise at not less than normal value for a period of at least three consecutive years. See 1999-2000 Administrative Review.

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[1] See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan, 61 FR 46621 (September 4, 1996).

[2] See Notice of Court Decision: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, 65 FR 31879 (May 19, 2000) (Redetermination on Remand aff'd Mitsubishi Heavy Indus., Ltd. v. United States, 275 F.3d 1056 (Fed. Cir. 2001)).

[3] See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Reviews, 65 FR 7492 (February 15, 2000) ("1997-1998 Administrative Review"); Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Antidumping Duty Administrative Review, 66 FR 11555 (February 26, 2001) ("1998-1999 Administrative Review"); Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Antidumping Duty Administrative Review and Revocation in Part, 67 FR 2190 (January 16, 2002) ("1999-2000 Administrative Review").

[4] See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order, In Part, 64 FR 72315 (December 27, 1999); and Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Review, 71 FR 11590 (March 8, 2006)) ("CCR Final Results")

On February 25, 2002, the Department revoked the antidumping duty order on LNPP from Japan under a five-year sunset review pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended (the Act), because the only domestic interested party in the sunset review, Goss (then known as Goss Graphics Corporation), withdrew its participation and thus its interest in the review.[5]

As discussed in the CCR Final Results, the Department noted that the results of the 2002 Sunset Review are unreliable because TKS' misconduct during the 1997-1998 administrative review of the LNPP antidumping duty order, which ultimately led to its company-specific revocation from the underlying order. TKS' misconduct in that review substantially tainted the integrity of the proceeding, and may have significantly undermined the integrity of the sunset review results, including the parties' decisions to participate or not in the sunset review. Accordingly, the Department rescinded TKS' company-specific revocation and stated its intent to reconsider the 2002 Sunset Review, pursuant to which the Department revoked the order in its entirety. On April 13, 2006, the Department published the notice of initiation of the reconsideration of sunset review of the antidumping duty order on LNPP from Japan pursuant to section 751(c) of the Act.[6] In that notice, the Department stated that it would conduct the reconsideration based on the same period covered by the 2002 Sunset Review (i.e., September 4, 1996, through September 3, 2001) (POR).

Discussion of the Issues

The Department is conducting this reconsideration of the sunset review to determine whether revocation of the antidumping duty order would have been likely to lead to a continuation or recurrence of dumping, had the order not been revoked under the 2002 Sunset Review. Sections 752(c)(1)(A) and (B) of the Act provide that, in making a sunset review determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the International Trade Commission ("ITC") the magnitude of the margins of dumping likely to prevail if the order were revoked.

On April 28, 2006, the Department received the Notice of Intent to Participate from Goss within the deadline specified in 19 CFR 351.218(d)(1)(i). Goss claimed domestic interested party status under section 771(9)(C) of the Act, as a producer of a domestic-like product in the United States.

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[5] See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan (A-588-837) and Germany (A-428-821): Notice of Final Results of Five-Year Sunset Reviews and Revocation of Antidumping Duty Orders, 67 FR 8522 (February 25, 2002) ("2002 Sunset Review").

[6] Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Reconsideration of Sunset Review, 71 FR 19164 (April 13, 2006).

On May 15, 2006, Goss submitted a complete substantive response within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). On that date, we also received substantive responses from respondent interested parties, MHI and TKS, who are foreign producers and exporters of the subject merchandise for purposes of this review. In their substantive responses, MHI and TKS claimed interested party status under section 771(9)(A) of the Act. We found these responses to be adequate because MHI and TKS account for more than 50 percent of the exports of subject merchandise from Japan to the United States during the sunset review period.[7]

Goss, MHI, and TKS filed rebuttal comments in response to the May 15, 2006, substantive responses on May 26, 2006. On June 28, 2006, MHI requested that the Department reconsider its adequacy determination, issued on June 8, 2006, based on its contention that Goss does not qualify as a domestic interested party. On July 18, 2006, the Department requested additional information from Goss with respect to its status as a domestic producer during the POR and subsequently through November 30, 2001, which includes the period during which the original sunset review would have been conducted. Goss responded to the Department's request on August 1, 2006. MHI and TKS submitted comments on Goss' submission on August 31, 2006. Goss and MHI submitted further comments on this topic on October 2 and October 6, 2006, respectively.

Below we address the comments of the interested parties.

Issue 1. Whether the Department has the authority to conduct this sunset review and to reinstate a revoked order.

TKS argues that the Department has no statutory authority to conduct a sunset review of an antidumping duty order that has been revoked. TKS contends that, in order to conduct this review, the Department has gone back in time to "create" the antidumping duty order that is the legal predicate for the review – an exercise for which there is neither legal nor factual basis. TKS argues that, in this case, an investigation was completed, an antidumping duty order was issued, and the order was subsequently revoked through the normal sunset review process. Under these circumstances, TKS contends, an order can be imposed only after a new antidumping investigation is conducted resulting in findings of dumping and injury. TKS adds that the proposed action is also contrary to the WTO Antidumping Agreement which does not permit the Department to reinstate an antidumping duty order after it has been revoked.

In addition, TKS asserts that the Department cannot use this proceeding to impose antidumping duties on TKS to punish the company for allegedly making false statements in the 1997-1998 administrative review. TKS claims that this approach would be an improper use of the

[7] See Memorandum to Irene Darzenta Tzafolias, Acting Director, AD/CVD Operations, Office 2; Re: Adequacy Determination in Reconsideration of Sunset Review on Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan (June 8, 2006) ("Adequacy Memo").

antidumping law because it is well established that the law is remedial rather than punitive in nature.

MHI opposes the reinstatement or reimposition of the revoked order on LNPP, arguing that the statute is clear that the order should remain revoked where no entity qualifying as a domestic interested party responded to the original Notice of Initiation or appeared in this reconsideration. MHI contends that since the Department unconditionally revoked the antidumping duty order following completion of a five-year sunset review in 2002, an antidumping duty order may only be imposed through initiation of a new antidumping investigation with a contemporaneous determination of material injury (or threat of material injury).

MHI also argues that Elkem Metals Co. v. United States, 193 F. Supp. 2d 1314 (CIT 2002) (Elkem Metals), which supports the proposition that agencies may reopen and reconsider their final results if a party to the proceeding committed fraud that affected the outcome of the proceeding, is inapposite in this case because there has been no suggestion that any information was fraudulently submitted or omitted from the Department's sunset proceeding.

Finally, MHI argues that, while the Department was well-founded in its decision to reexamine the administrative review in which fraud actually occurred, using the sunset review to revisit the revocation of the order is duplicative because Goss stands to recover a substantial amount of money from TKS, as required under U.S. law, to compensate for injury due to TKS' violation of the 1916 Antidumping Act. In addition, according to MHI, the Department has no basis to reopen the final results of a separate and distinct proceeding, such as this sunset review, based upon findings or allegations of fraud in another proceeding. See Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Italy, 63 FR 40422, 40426 (July 29, 1998) ("{E}ach antidumping proceeding is distinct and based on its own record"), and Final Results of Antidumping Duty Administrative Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom, 62 FR 54043 (October 17, 1997) ("Each administrative review is a separate reviewable proceeding involving different sales, adjustments, and underlying facts. What transpired in previous reviews is not binding precedent in later reviews."). Moreover, MHI maintains that the reimposition of the order would violate the United States' obligations under international law, as set forth in the World Trade Organization Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, and thus, would equally violate U.S. law.

Goss contends that the Department has the authority to reconsider its decision regarding the revocation of the LNPP antidumping duty order in order to protect the integrity of the Department's proceedings, as articulated in Elkem Metals. Both Elkem Metals and Alberta Gas Chemicals, Ltd. v. Celanese Corp., 650 F. 2d9. (Alberta Gas) hold that agencies may reconsider their determinations made under antidumping laws where the determination is tainted by fraud. Goss continues that TKS committed fraud during the conduct of administrative reviews under the order (see Issue 5 below), and tainted the sunset review proceeding. In particular, Goss asserts

that its closure of its manufacturing facility and subsequent withdrawal from the 2001 sunset review proceeding were directly related to TKS' misconduct. Goss argues that, but for TKS' alleged misconduct and fraud from 1996 through 2001, Goss would have continued its domestic operations and fully participated in the 2001 sunset review.

While Goss acknowledges that MHI was not involved in TKS' fraudulent activity, Goss argues that sunset reviews are conducted on an order-wide basis and there is no legal basis to remove one foreign producer from the sunset review proceeding. Accordingly, Goss argues, the Department has no discretion to conduct this reconsideration of sunset review on anything but a country-wide basis. Further, while MHI may consider this reconsideration to be unfairly imposed upon it, Goss maintains that MHI indirectly benefitted from TKS' alleged fraud because it resulted in a revocation of the order that allowed MHI to participate in the U.S. market without the discipline of the antidumping duty order. To return the antidumping duty order to the *status quo* in the absence of the fraud, Goss contends, MHI must also be included in any reinstated antidumping duty order.

DOC Position:

The Department is reconsidering the original sunset review in order to protect the integrity of our proceedings following the actions of TKS which rendered the results of the original sunset review unreliable. The courts have held that agencies have the inherent authority to protect the integrity of their proceedings. See Alberta Gas, 650 F.2d at 13-14. Moreover, it is well-established that "federal agencies have the power to reconsider their final determinations." Elkem Metals, 193 F. Supp. 2d at 1320 (citing Trujillo v. Gen. Elec. Co., 621 F.2d 1084, 1086 (10th Cir. 1980) ("Administrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider")). In this case, a federal district court concluded that TKS and its former counsel falsified business records, destroyed documents, and "agreed to a fraudulent price increase to avoid a finding of dumping;" which occurred during the 1997-1998 administrative review of the antidumping duty order. See Goss Int'l Corp. v. Tokyo Kikai Seisakusho, Ltd., 321 F. Supp. 2d 1039 (N.D. Iowa 2004), aff'd by Goss Int'l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft, 434 F.3d 1081 (8th Cir. 2006), denied *certiorari* by Tokyo Kikai Seisakusho, Ltd. v. Goss Int'l Corp., 126 S. Ct. 2363 (2006). Given the seriousness of TKS' misconduct, we find it reasonable to reconsider the sunset review to examine the likelihood of continued dumping, and to allow all parties an opportunity to participate. We find that such an examination is necessary because TKS' misconduct in the 1997-1998 administrative review was so egregious that it renders the results of the subsequent sunset review unreliable.

Furthermore, MHI's reading of Elkem Metals is incorrect. The court in Elkem Metals did not limit an agency's inherent authority to reconsider its prior determinations solely to proceedings wherein the fraud occurred. Instead, the court upheld the general principle that federal agencies possess the authority to reconsider their prior determinations and affirmed the ITC's exercise of such inherent authority. Here, the original sunset review period includes the 1997-1998

administrative review and thereby necessarily includes the effects of TKS' egregious behavior during that administrative review. Therefore, it is necessary for the Department to defend the integrity of its proceedings for future purposes and reconsider the original sunset review.

Moreover, the Department will not unilaterally and prospectively reinstate the order on LNPP from Japan should we find a likelihood of continuation of dumping. The Department by itself cannot order a continuation of an antidumping order without an affirmative likelihood of continued injury finding by the ITC. See section 751(c) of the Act; Uruguay Round Agreements Act (URAA), Statement of Administrative Action (SAA), H.R. Doc No. 103-316, vol. 1, at 879 (1994) (the Department determines whether the revocation of the order would lead to recurring or continued dumping, but the ITC determines the likelihood of recurring or continued injury).

Issue 2. Whether Goss may be considered a domestic interested party for the purpose of this review

MHI argues that, since Goss did not have production facilities in the United States during the sunset review POR and because Goss is the only domestic entity to argue in favor of the order in the original sunset review and during this reconsideration, there was and is no domestic interested party in this sunset review. As required by section 751(c)(3) of the Act, MHI asserts that the order was properly revoked in the 2002 Sunset Review and should remain revoked due to the failure of a domestic interested party to respond in this reconsideration. MHI claims that Goss' failure to confront the central and repeatedly raised question regarding whether a qualifying domestic interested party has responded is a concession that Goss did not exist as a domestic producer of LNPP at the conclusion of the sunset review period specified by the Department. In support of its position, MHI cites an example from the Department's determination of standing and industry support in the context of an antidumping duty investigation, pursuant to sections 732(b) and (c)(4) of the Act,[8] and the ITC's consideration of a domestic interested party in the context of an ITC sunset review, Sebacic Acid from China, Inv. No. 731-TA-653 (Second Review), USITC Pub. No. 3775 (May 2005) (Sebacic Acid). Therefore, according to MHI, without any response from a domestic interested party that actually had production facilities at the time relevant to this sunset review, the statute requires the order to be revoked.

TKS argues that during the sunset review POR, Goss - the only domestic party that asserted an interest in participating in the review - ceased to be a domestic producer due to the closure of its plant in Cedar Rapids and the shifting of all production to its overseas plants. Therefore, according to TKS, Goss lost its status as a domestic interested party. Accordingly, TKS submits

[8] The memorandum in Exhibit 8 of MHI's August 31, 2006, submission was part of the record in Notice of Final Determination of Sales at Less Than Fair Value: Low Enriched Uranium From France, 66 FR 65877 (December. 21, 2001) (LEU), and contemporaneous countervailing duty investigations for the product from four countries.

that the Department is required to revoke the order within 90 days from the date of the notice of initiation of the sunset review, in accordance with 19 CFR 351.218(d)(1)(iii)(B)(3).

In responding to a July 18, 2006, letter issued by the Department, in which the Department requested information concerning Goss' domestic production activities through November 30, 2001, Goss stated that it had been a domestic interested party for the entire sunset review POR. Even after it announced the closure of its U.S. production facility on August 31, 2001, Goss asserts that it retained sufficient production capabilities through November 30, 2001, to be considered a domestic producer. Goss specifically notes that it maintained all its production assets and had sufficient labor resources available so that it was capable of production through the end of the period in question.

In rebuttal to Goss' assertions, MHI and TKS point to numerous Goss statements during August and September 2001 that it had closed its sole U.S. production facility and had no intent to resume LNPP production in the United States.[9] According to MHI and TKS, the Department considers whether a company has a substantial manufacturing operation or stake in the domestic industry in order to be considered a member of the domestic industry.[10] The companies each assert that, based on their analyses as detailed in their respective August 31, 2006, submissions, Goss did not meet this standard and does not qualify as a domestic producer for purposes of a sunset review. With respect to Goss' production assets and activities continuing through November 2001, as reported by Goss, MHI adds that it is reasonable to expect that it would take several months to fully shut down a complex manufacturing operation such as an LNPP plant, and that the continuation of production activity during this period does not constitute production of subject merchandise nor intent to produce subject merchandise. Accordingly, both companies contend that the Department should terminate this proceeding because Goss cannot be considered a domestic producer. Thus, both MHI and TKS agree there is no domestic party interested in this proceeding.

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[9] For example, MHI cites Goss' September 10, 2001, press release stating that, although Goss' U.S. manufacturing facility was closing, it would continue to support its U.S. customers from its European and Asian affiliates. See MHI's August 31, 2006, submission at page 13. As another example, TKS refers to Goss' December 10, 2001, bankruptcy motion, in which Goss states that it "permanently ceased the majority of its North American manufacturing operations." See TKS' August 31, 2006, submission at page 6 and Exhibit 7.

[10] See "Determination of Industry Support for the Antidumping and Countervailing Petitions on Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom," Memorandum to Holly A. Kuga, Acting Deputy Assistant Secretary, dated December 27, 2000, included as Exhibit 8 to MHI's August 31, 2006, submission.

DOC Position:

The Department disagrees with MHI and TKS that Goss did not qualify as a domestic interested party during the sunset review POR. Pursuant to 19 CFR 351.218(e)(1)(i), the Department "normally will conclude that domestic interested parties have provided adequate response to a notice of initiation where it receives a complete substantive response...from at least one domestic interested party." Therefore, a complete substantive response must be received from a domestic interested party, defined as "a manufacturer, producer, or wholesaler in the United States of a domestic like product." See section 771(9)(C) of the Act.

During the original sunset review, the Department received a substantive response from Goss on August 31, 2001. Goss also filed a substantive response on May 15, 2006, in the context of this this reconsideration. Although the terms "manufacturer" and "producer" are not defined in the statute or the regulations, there is no dispute that Goss was a producer of a domestic like product through August 31, 2001, when, in addition to submitting its substantive response, Goss announced its decision to close its U.S. manufacturing facility.

Given that this review is a reconsideration of the original sunset review and its POR, we are relying on the applicable facts during the original deadlines for this review in considering the issue of Goss' status as a domestic producer. MHI and TKS do not dispute the fact that Goss was a domestic producer of LNPP for all but the last three days of the 5-year sunset review period. Therefore, Goss met the requirements of section 751(c) of the Act and 19 CFR 351.218(e)(1)(i) when it submitted its complete substantive response on August 31, 2001. Certainly no objection to Goss' status was raised by TKS or MHI on that date, because neither TKS nor MHI chose to file any response at all. As a result of this failure to respond on the part of TKS and MHI, the statute required that the original LNPP from Japan sunset review be conducted on an expedited basis.

Therefore, the issue is whether Goss' status as a domestic producer with a stake in the outcome of the sunset proceeding was terminated by any subsequent developments during the expedited sunset review period. We know that on August 31, 2001, concurrent with its substantive response indicating that it would participate in the sunset proceeding, Goss announced its decision to close its U.S. production facilities. As described in its July 31, 2006, response, Goss stated that, following its August 31, 2001, decision to close its U.S. plant, it retained the capacity to produce LNPP in the United States, as its plant and equipment assets were still in place, as were some production-related workers who continued to work on LNPP components that were outside the scope of the order. While we note Goss' statements regarding its intent at that time to cease U.S. LNPP production, the record does not demonstrate that Goss' status as a domestic producer terminated during the time period relevant to the expedited sunset review. Therefore, during the time-period relevant to an expedited sunset review, Goss maintained its status as a domestic producer with a stake in the outcome in the sunset proceeding.

As acknowledged in MHI's submission, the Department has explained previously that the term 'producer' is not defined in the statute and that . . . to fulfill the legislative purpose of the different provisions as issue, the Department must engage in a different examination, and thereby define the term differently depending on the context."[11] While MHI refers to the Department's determination of standing and industry support in the context of an antidumping duty investigation, we find such determinations less relevant to the examination of Goss' domestic interested party status in the context of this sunset review proceeding. The LEU investigation, cited by MHI, addressed situations where the entities in question had not participated in any prior segments of the relevant proceeding; therefore, the status of each entity as a domestic interested party in the relevant proceeding was never established. In contrast, Goss participated actively throughout all segments of the LNPP from Japan proceedings where its status as a "producer" domestic interested party was established. Similarly, Sebacic Acid involved a claim of domestic interested party status for a party whose status had not been established previously. By contrast, the issue involved in the reconsideration of this sunset review is whether Goss' established status as a domestic interested party was somehow terminated by developments during the expedited sunset review period. As explained above, our analysis of the facts supports the conclusion that Goss maintained its status as a domestic producer with a stake in the outcome in the sunset proceeding.

For these reasons, for the purpose of this sunset review reconsideration, we disagree with MHI and TKS and find no basis to determine that there is a lack of domestic interested party interest in this reconsideration of the sunset review.

Issue 3. Likelihood of Continuation or Recurrence of Dumping

Goss asserts that both MHI and TKS continued to dump after the antidumping duty order was established. With respect to MHI, Goss notes that, in the only review completed during the duration of the antidumping duty order, the Department found a margin of 15.72 percent. With respect to TKS, based on the Department's finding in the CCR Final Results, the Department assigned a margin of 59.67 percent for the 1997-1998 review. Therefore, in accordance with Department practice, the Department should find that revocation of the order would likely lead to continuation of dumping.

Furthermore, Goss believes that information obtained since the Department's original revocation of the order on the subject merchandise, pursuant to the 2002 sunset review, now indicates that the order should not have been revoked, as dumping continued after the order was revoked in 2002. According to Goss, several media reports, included in its May 15, 2006, substantive response, support this contention.

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[11] See Final Remand Determination, USEC Inc. and United States Enrichment Corporation v. United States, Slip Op. 03-34 (March 25, 2003) at page 11, as included in Exhibit 9 of MHI's August 31, 2006, submission.

TKS argues that the Department should disregard Goss' allegations of post-revocation dumping because it is irrelevant since it relates to events that occurred after the POR. Moreover, TKS claims that the September 2003 issue of Newspapers and Technology cited by Goss provides no evidence that TKS engaged in dumping after the order was revoked and reflects the mistake of equating competition with dumping.

DOC Position:

Consistent with the guidance provided in the legislative history accompanying the URAA, specifically the SAA, H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's determinations of likelihood will be made on an order-wide basis. See SAA at 879 and House Report at 56. In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. See SAA at 889 - 890, House Report at 63-64, and Senate Report at 52. In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping order.

In determining whether revocation of an antidumping duty order would be likely to lead to the continuation or recurrence of dumping, the Department considers evidence of dumping from the investigation and subsequent administrative reviews, as well as the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. See section 751(c)(1)(B) of the Act. Normally, the Department will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where dumping continued at any level above *de minimis* after the issuance of the order. See SAA at 889. Declining margins alone normally are not determinative as to whether revocation of an antidumping order is not likely to lead to continuation or recurrence of dumping; the legislative history makes clear, however, that continued margins at any level would lead to a finding of likelihood. See SAA at 889. Following the issuance of the antidumping duty order in 1996, the Department found that dumping continued at rates above *de minimis*. For the 1997-1998 administrative review, following the CCR Final Results, TKS received a rate of 59.67 percent. For the 1998-1999 review, the Department calculated a rate of 15.67 percent for MHI. See 1998 - 1999 Administrative Review.

Given the nature of LNPP, which are large, complex machines, sold on an order-specific unit basis, rather than weight basis, with parts and components constructed and imported over a period of months, an analysis of the import volume is not meaningful. As noted above, the Department has found that continued dumping after the issuance of the order is sufficient to find likelihood of dumping. In addition, the SAA and the House Report state that the Department

may determine likelihood of continued dumping based on (a), (b), or (c), as discussed above. Thus, all conditions do not need to be met to make a likelihood determination. Therefore, we determine that recurrence of dumping of LNPP from Japan would have been likely if the order had not been revoked pursuant to the 2002 Sunset Review.

We agree with TKS that allegations of dumping following the 2002 Sunset Review are irrelevant for this review. The information derived from the Sunset Review POR is sufficient to make a determination regarding the likelihood of dumping issue.

Issue 4. Magnitude of the Margin Likely to Prevail

Goss contends that, consistent with the SAA and the Department's Policy Bulletin 98.3, the Department normally provides to the ITC the margin that was determined in the final determination in the original investigation, which in this case would be 59.67 percent for MHI and 51.97 percent for TKS, and an "All Others" rate of 55.05 percent. However, Goss states that, as the Department has assigned a rate to TKS of 59.67 percent for its actions in the 1997-1998 review, it may be more appropriate to report this rate to the ITC.

TKS argues that, assuming for purposes of this proceeding that the order still exists, the Department should determine that TKS' dumping margin would be zero if the order is revoked. TKS contends that the fact that TKS achieved significant sales in the United States without dumping demonstrates that dumping is unlikely to recur if the order is revoked.

DOC Position:

Pursuant to section 752(c)(3) of the Act and the SAA at 890, the Department normally will provide to the ITC the company-specific margin from the investigation. For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "All Others" rate from the investigation. The Department's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC. See, e.g., Ball Bearings and Parts Thereof from Japan and Singapore; Five-year Sunset Reviews of Antidumping Duty Orders; Final Results, 71 FR 26321, (May 4, 2006), and accompanying Issues and Decision Memorandum at Comment 2, where the Department reported more recently calculated margins because each Japanese respondent had demonstrated decreased margins with import levels steady or increased over the 15 administrative reviews conducted with the discipline of the order in place.

For the purpose of this sunset review reconsideration, we find that there is an insufficient basis to deviate from our practice of relying on the investigation margin for TKS or any other company, such as the example cited above. Therefore, we are reporting the rates calculated in the

investigation, as revised under the remand redetermination. See Notice of Court Decision: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, 65 FR 31879 (May 19, 2000).

Issue 5. Effects and Magnitude of TKS Fraud in Administrative Reviews and Sunset Review

Goss contends that, based on information it has provided for the record, the Department should revise the 0.00 percent dumping margins found for TKS in the 1998-1999 and 1999-2000 administrative reviews and instead apply an adverse facts available (AFA) 59.67 percent rate to TKS' sales for those reviews. According to Goss, TKS withheld or misrepresented material information about the U.S. sales subject to those reviews that, had the information been properly disclosed, may have resulted in margins for TKS above the zero rates the Department calculated. Goss' submission of May 15, 2006, includes the details and documentation of its allegations. Goss continues that, because TKS failed to provide this relevant information to the Department during the two reviews, application of the AFA rate to TKS' U.S. sales for these two reviews is warranted.

MHI argues that it would not be reasonable or in accordance with law to conclude that fraud by TKS caused Goss to close its U.S. manufacturing facility. MHI maintains that because no link can be made between determining whether any domestic interested party responded to the notice of initiation and whether TKS' alleged fraud led to Goss' decision to close its U.S. production facility, there is no reason for the Department to disturb the settled results of the prior sunset review analysis which led to the revocation of the order.

MHI adds that, even though the Department stated in the decision memorandum to the final results of its changed circumstances review that it would evaluate the "variety of economic and commercial reasons unrelated to the antidumping proceeding" that were the cause of Goss' closure in the United States and subsequent withdrawal from the sunset review,[12] the Department has repeatedly explained that it does not have the authority to conduct that type of analysis. Therefore, fraud in an administrative review cannot be a basis to overturn the sunset review results.

MHI maintains that the Department cannot sustain a decision that TKS' alleged fraud led to Goss' financial condition and decision to close its Cedar Rapids facility. Rather, according to MHI, published reports from the relevant time period reveal that Goss alone was responsible for destroying its position in the LNPP industry. MHI argues that the documents on the record in this reconsideration proceeding describe in detail Goss' failures in this regard (e.g., quality problems, disastrous installation failures, a tarnished corporate reputation, and significant liquidity problems). Therefore, in light of significant evidence on the record regarding Goss'

[12] See Issues and Decision Memorandum for the Changed Circumstances Review of Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan, from Stephen J. Claeys to David M. Spooner (March 8, 2006) at 14 (Decision Memo for Changed Circumstances Review).

financial difficulties that did not stem from any action by TKS, which in turn led to Goss' decision to close its U.S. production, MHI claims that the Department cannot reasonably conclude that the actions of TKS caused the 2001 closure of Goss' U.S. manufacturing operations.

TKS argues that its alleged misconduct in the 1997-1998 administrative review did not cause either Goss' closure of its Cedar Rapids facility in August 2001 or Goss' withdrawal from the sunset review in December 2001, but, rather, that these events were due to Goss' mismanagement, the debt burden created by a leveraged buy-out, poor customer relations, and by competition from producers other than TKS. TKS provides a summary of information obtained from documents produced in Goss Int'l Corp. v. Tokyo Kikai Seisakusho, Ltd., 321 F. Supp. 2d 1039 (N.D. Iowa 2004) (Goss Int'l), the Department's changed circumstances review, and from articles in the trade press in support of its position.

Furthermore, TKS argues that the finding of liability in Goss Int'l does not demonstrate that TKS was responsible for Goss' problems or for the closing of the Cedar Rapids plant. TKS also contends that, while the Court of Appeals found that there was sufficient evidence from which a jury could find that TKS intended to injure Goss, it cannot be established that TKS was responsible for Goss' withdrawal from the domestic industry in 2001.

TKS submits that Goss' allegations regarding TKS' questionnaire responses in the second and third administrative reviews have no bearing on the outcome of the prior sunset review. According to TKS, Goss has not shown that the Department would have found a dumping margin for TKS in either review if the Department had applied the exchange rate that was in effect on the dates of sale that Goss alleges. More importantly, TKS asserts that Goss failed to show that the prior sunset review would have had any different result even if TKS was found to have had a dumping margin in all three reviews. Finally, TKS asserts that the Department should conclude that the original sunset review would not have proceeded differently in the absence of TKS' alleged misconduct, and that the antidumping duty order was properly revoked after Goss withdrew from the industry and from the sunset review.

DOC Position:

The need to reconsider the 2002 Sunset Review was brought about by TKS' fraudulent activity, which rendered the results of the original sunset review unreliable. The purpose of this sunset review reconsideration remains to determine whether there was a likelihood of continuation or recurrence of dumping, and what was the magnitude of the margin likely to prevail, had the LNPP antidumping duty order not been revoked in the 2002 Sunset Review. See sections 751(c)(1) and 752(c)(3) of the Act. These issues have been addressed above. Goss' allegations of fraud or misconduct by TKS in the 1998-1999 and 1999-2000 administrative reviews are not relevant to these determinations and do not add to their consideration. Therefore, we have not addressed these allegations.

We note that we considered these allegations in the recent changed circumstances proceeding and found no basis to revisit our finding in those administrative reviews. See CCR Final Results, and accompanying Issues and Decision Memorandum at Comment 4. The additional information Goss submitted in this review is not significantly different from the material considered in the CCR Final Results and does not merit further attention in this review.

Whether or not Goss' plant closing and withdrawal from the 2002 Sunset Review were direct results of TKS' misconduct are also not relevant for our consideration of likelihood of dumping and the magnitude of margin likely to prevail. The alleged effects of TKS' actions on Goss' role as a domestic producer during the sunset review POR are more properly considered in the context of the portion of the sunset review conducted by the ITC with respect to the likelihood of recurrence or continuation of material injury or threat thereof.

Issue 6. Whether MHI may be excluded from any Reimposition of the Order

MHI argues that, if the Department reinstates the order, it should rely on its discretion to exclude MHI from the application of the new order because at no point has any party even suggested error or misconduct on the part of MHI. MHI also argues that, even if the Department were to conduct the sort of injury analysis described in the CCR Final Results, which MHI submits it cannot, the Department cannot use adverse assumptions to complete its analysis in any decision that has an impact on MHI. MHI maintains that, absent a conclusion that MHI failed to participate fully in this proceeding, the use of adverse assumptions to support a decision that had effect as to MHI would be wholly inappropriate and contrary to the Act. Therefore, according to MHI, the Department cannot reimpose an order that has effect as to MHI if the reasoning underlying that conclusion was based on the use of adverse assumptions.

Goss claims that the fact that MHI was not involved in TKS' fraud is irrelevant. Goss argues that, because the statute mandates that sunset reviews be conducted on a country-wide basis, there is no legal basis for the Department to "carve out" a single foreign producer, a fact which MHI itself acknowledges. Goss also believes that MHI indirectly benefitted from TKS' fraud. Goss reasons that, because TKS' fraud weakened the domestic industry to the point where it was forced to cease production and withdraw from the review, MHI was able to continue its participation in the U.S market without the discipline of the order, despite evidence showing that MHI continued to dump after the imposition of the order. Accordingly, in order to return the order to the status quo in the absence of fraud, Goss asserts that MHI must be included in any continued order.

DOC Position:

We agree with Goss. Antidumping duty orders are issued on an country-wide basis, and sunset reviews are conducted on a country-wide basis. See SAA at 879. There is no statutory provision for conducting a sunset review solely for one company in a country subject to an order, nor does the Department have the discretion to exclude a company from the continuation of an order

following the completion of a sunset review. The Department acknowledges that MHI is not accused of any misconduct in any of the antidumping duty reviews under the LNPP antidumping duty order, nor in the original sunset review. Nevertheless, TKS' egregious behavior rendered the results of the 2002 Sunset Review unreliable and required reconsideration. With a more than sufficient basis to reconsider the 2002 Sunset Review, we are unable to limit this review and its results solely to TKS.

Preliminary Results of Review

For purposes of this reconsideration of the sunset review, we determine that, had the antidumping duty order not been revoked in the 2002 Sunset Review, revocation of the antidumping duty order on LNPP from Japan would have likely led to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (Percent)
Mitsubishi Heavy Industries, Ltd.	59.67
Tokyo Kikai Seisakusho, Ltd.	51.97
All Others	55.05

Recommendation

Based on our analysis of the responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the preliminary results of review in the Federal Register.

AGREE _____ DISAGREE_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date