

SUBMITTED ELECTRONICALLY

April 20, 2010

Mr. Ronald K. Lorentzen
Deputy Assistant Secretary for Import Administration
Room 1870
Department of Commerce
14th Street and Constitution Ave., NW
Washington, DC 20230

**Subject: Response to Request for Comments Concerning Retrospective
Versus Prospective Antidumping and Countervailing Duty Systems
(75 Fed. Reg. 16079 (March 31, 2010))**

Dear Mr. Lorentzen:

On behalf of JTEKT Corporation and Koyo Corporation of U.S.A.; Nachi Fujikoshi Corp., Nachi America, Inc. and Nachi Technology, Inc.; NSK Ltd., NSK Corporation and NSK Precision Americas, Inc.; and NTN Corporation, NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation, NTN Driveshaft, Inc., NTN-Bower Corporation and NTN-BCA Corporation (hereinafter “the Companies”), we hereby respond to the request by the Department of Commerce (the “Department”) for public comments concerning retrospective versus prospective antidumping and countervailing duty systems.¹ These comments are being filed electronically by the due date established in the request for comments.

The Companies understand that the Department has requested public comments to inform its report on the relative advantages and disadvantages of prospective and retrospective antidumping and countervailing duty systems, which is being prepared at the direction of Congress.² The Companies further understand that Congress requested this report based on a recommendation by the Government Accountability Office, which has cited the use of a retrospective system as a factor contributing to the U.S. government’s inability to collect the full amount of outstanding antidumping and countervailing duties owed by certain importers.³

The Companies appreciate the Department’s review and the opportunity to submit comments. As 2010 is the thirtieth anniversary of the Department’s administration of the U.S. trade remedy law, it is an opportune time for the Department to conduct this type of review. We hope that the

¹ See Report to Congress: Retrospective Versus Prospective Antidumping and Countervailing Duty Systems; Request for Comment and Notice of a Public Hearing, 75 Fed. Reg. 16079 (Mar. 31, 2010).

² See Conf. Rep. No. 111-366, at 609 (2010) (conference report for the 2010 Consolidated Appropriations Act, Pub. L. No. 111-117) (Dec. 16, 2009).

³ See Agencies Believe Strengthening International Agreements to Improve Collection of Antidumping and Countervailing Duties Would Be Difficult and Ineffective, GAO-08-876R (July 2008); Congress and Agencies Should Take Additional Steps to Reduce Substantial Shortfalls in Duty Collection, GAO-08-391 (March 2008) (“March 2008 GAO Report”).

Department will find our comments to be informative and helpful to its administration of the law in a fair and even-handed manner.

The Companies are leading global manufacturers of antifriction bearings, with localized production in dozens of countries and, indeed, represent a substantial portion of U.S. production of antifriction bearings. As global businesses, the Companies have experience with different antidumping duty regimes from both sides, and therefore offer these comments on the basis of a broad range of experience.

Summary

As detailed below, the Companies offer several comments about the comparative analysis of duty systems being undertaken by the Department. Importantly, the Companies respectfully submit that an abstract or theoretical comparison of two duty systems is unlikely to yield useful insight because the relative advantages or disadvantages of any duty system are dictated by the specific features of the system, which can vary widely. Thus, although there are many features of a prospective system, particularly certainty as to the amount of liability, that would recommend that system as a preferred model, it is impossible in the abstract for the Companies to advocate for one model over the other absent clarity about the specific features of a proposed prospective system. The U.S. retrospective system, for example, is far more open and transparent than at least some prospective systems, and it would be inappropriate to sacrifice those qualities of the U.S. system should the United States decide to adopt a prospective approach.

Despite the benefits of transparency and accuracy offered by the retrospective system, the Companies submit that the retrospective duty system employed by the United States suffers from an inherent problem – the lengthy uncertainty surrounding the amount of final duty liability due to the delay from the time of deposit of estimated duties until the time that the amount of additional liability or refund is finally determined. This uncertainty is exacerbated by certain conduct of the Department in administering the antidumping law, including the retroactive application of methodological changes in antidumping proceedings and other practices that are not inherent in the retroactive nature of the U.S. duty system.

Finally, the Companies observe that, inasmuch as the problem of uncollected duties is not a systemic problem and is limited to a small number of industries and importers, any remedy should be similarly targeted to those industries and importers.

Comments

The Companies cannot categorically offer a preference for a prospective or retrospective duty system. This is because there is no single form of a prospective duty system against which the current U.S. retrospective system can be compared. Rather, prospective systems can vary in important ways depending on the features selected by the legislature in establishing such a system and by the administering authority in implementing it. For example, a prospective system may or may not incorporate meaningful refund reviews, rigorous sunset reviews, and measures ensuring transparent and participatory proceedings. The presence or absence of these features, among many others, is critical to an evaluation of the relative advantages and disadvantages of a prospective system versus the U.S. retrospective system. Accordingly, the Companies do not express a preference for either a prospective or retrospective duty system in these comments.

Additionally, the Companies wish to emphasize that a retrospective system entails an inherent problem of overarching concern to exporters to the United States and their U.S. importers – specifically, the uncertainty surrounding the final amount of duty liability. As the Department is well aware, in a retrospective system, the final amount of duty liability is determined well after the time of importation (at which time only a cash deposit, covering an estimated amount of duties, is paid by the importer). The delay entailed by these proceedings can be crippling to a U.S. importer seeking to manage its costs and cash flow. The prolonged uncertainty also has a detrimental impact on a foreign exporter’s relationships with unaffiliated (EP) U.S. customers, who lack perspective regarding the annual review process and, because of the uncertainty and long delays in determining the final amount of duties under the retrospective system, resist serving as importers of record. Such difficulties in identifying the appropriate importer of record impose an unnecessary burden on international commerce.

Moreover, the inherent uncertainty in the retrospective system employed by the United States is exacerbated by certain aspects of the Department’s administration of this system. For example, in the course of administrative reviews the Department changes often well-settled rules by which final duty liability is calculated, and then applies the changed methodology to entries made in the prior period covered by the administrative review. As a result, exporters are unable to modify their pricing practices to avoid dumping because the rules used to evaluate these pricing practices are subject to retroactive change.

The Companies confronted this very scenario when the Department, in the fifteenth administrative review of the antidumping order on ball bearings, chose to replace the model match methodology that had been used to calculate margins for the previous fourteen reviews.⁴ The Companies’ recent experience with the new model match methodology is only one example of how even the most responsible exporter actively seeking to avoid dumping into the United States cannot be certain that its dumping liability will be zero or minimal because of the threat of retroactive methodological changes by the Department.

The unfairness of the current U.S. system is accented by certain elements that are not dependent on its retrospective nature. For example, the United States has refused promptly and fully to comply with adverse decisions by the World Trade Organization (“WTO”) concerning the Department’s “zeroing” methodology. The Department’s continued use of zeroing, despite multiple adverse WTO decisions, results in the calculation of inflated dumping margins for exports from some of the United States’ closest allies, including antifriction bearings from Japan. Indeed, the Companies’ experience with the U.S. retrospective system would have long-ago terminated had the United States implemented the WTO decisions in a timely and responsible manner. The United States has also never considered adopting the so-called “lesser duty” rule employed by the European Union and other jurisdictions, which reduces dumping liability on imports to the level required to offset the actual injury to the affected domestic industry. In the Companies’ view, any broad reconsideration of the U.S. duty system undertaken by the Department or Congress necessarily must address these critical issues.

⁴ See Antifriction Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 70 Fed. Reg. 54711 (Sept. 16, 2005).

Finally, the Companies observe that Congress's request that the Department evaluate the relative advantages and disadvantages of prospective and retrospective duty systems is somewhat misplaced to the extent that this evaluation is undertaken for the purpose of remedying the government's failure to collect the full amount of outstanding antidumping and countervailing duties owed by a small subset of importers. The Companies by no means countenance the evasion of duty liability, but the evasion observed by the Government Accountability Office is neither widespread nor rampant in the U.S. duty system. To the contrary, the Government Accountability Office has established that uncollected duties are highly concentrated by industry, product, country of origin and type of importer.⁵ And the Companies are not aware of evasion having been a concern in the administration of the antidumping duty orders against antifriction bearings from Japan. If evasion regularly arises with respect to a limited number of specific industries and importers, in the Companies' view, the proper response is the implementation of measures that target these industries and importers as well as measures that strengthen customs enforcement regarding the relevant entries.

Conclusion

We appreciate the opportunity to provide comments concerning retrospective versus prospective antidumping and countervailing duty systems. If the Department has any questions concerning these comments, please do not hesitate to contact the undersigned.

Respectfully submitted,

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⁵ See March 2008 GAO Report, at 13-14.