

December 4, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Changed-Circumstances
Review of the Antidumping Duty Order on Ball Bearings and Parts
Thereof from France: SKF Aeroengine France S.A.S.U.

Summary

We have analyzed the case and rebuttal briefs of the interested parties in the changed-circumstances review of the antidumping duty order on ball bearings and parts thereof from France. Based on this analysis, we are affirming the preliminary results of this review. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is the complete list of the issues in this changed-circumstances review for which we received comments and rebuttal comments by parties:

1. Successorship
2. Applicable Cash-Deposit Rate

Background

On June 9, 2009, the Department of Commerce (the Department) published the preliminary results of the changed-circumstances review of the antidumping duty order on ball bearings and parts thereof from France concerning SKF Aeroengine France S.A.S.U. See *Ball Bearings and Parts Thereof from France: Preliminary Results of Changed-Circumstances Review*, 74 FR 27280 (June 9, 2009) (*Preliminary Results*). In the *Preliminary Results*, we determined that SKF Aeroengine France S.A.S.U. is the successor-in-interest to SNFA S.A.S.U. and should be assigned the same antidumping-duty treatment as SNFA S.A.S.U. We invited parties to comment on the preliminary results. We received a case brief from The Timken Company and a rebuttal brief from SKF France S.A., SKF Aerospace France S.A.S., and SKF Aeroengine France S.A.S.U. We did not hold a hearing as one was not requested.

Company Abbreviations

SKF Aeroengine - SKF Aeroengine France S.A.S.U. (formerly SNFA S.A.S.U.)

I&D Memo - Issues and Decision Memorandum adopted by a *Federal Register* notice of final determination of an investigation or final results of review

SKF - AB SKF

SKF Aerospace - SKF Aerospace France S.A.S

SKF France - SKF France S.A. and SKF Aerospace France S.A.S

SNFA France - SNFA S.A.S.U. (formerly SNFA S.A.S.)

SNFA Group - SNFA Bearings Ltd., SNFA France, and Somecat S.p.A.

Timken – The Timken Company

The Department's Collapsing and Successorship Determinations

On March 2, 2007, we initiated a changed-circumstances review to determine whether post-acquisition SNFA France was a successor-in-interest to pre-acquisition SNFA France. See *Ball Bearings and Parts Thereof from France: Initiation of an Antidumping Duty Changed-Circumstances Review*, 72 FR 9513 (March 2, 2007). During the course of the changed-circumstances review, the companies informed the Department that SNFA France would be changing its name to SKF Aeroengine.

On June 29, 2007, we initiated an administrative review of the antidumping duty order on ball bearings and parts thereof from France for the period May 1, 2006, through April 30, 2007, with respect to SKF France. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 72 FR 35690 (June 29, 2007). On October 26, 2007, we rescinded the changed-circumstances review and explained that, because SKF's acquisition had occurred during the 2006-2007 period of review, we would address any issues that had arisen during the course of the changed-circumstances review in the context of the 2006-2007 administrative review. See *Ball Bearings and Parts Thereof from France and Italy: Rescission of Antidumping Duty Changed-Circumstances Reviews*, 72 FR 60798, 60799 (October 26, 2007).

During the 2006-2007 administrative review, we determined that it would be inappropriate to collapse SNFA France and SKF France because, for example, "it would take substantial retooling expenses on behalf of either the SKF France companies or SNFA France to make products currently made by the other." See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Review and Rescission of Reviews in Part*, 73 FR 52823 (September 11, 2008) (*AFBs 18*), and accompanying I&D Memo at Comment 11. Moreover, we also stated that "we are not persuaded that the changes in organization or integration of management are substantial enough at this point to conclude" that a significant potential for the manipulation of price or production exists. *Id.*

In determining that a significant potential for the manipulation of price or production did not exist, we explained that SKF's 100-percent ownership of SNFA France was not a deciding factor

given the need to consider other information such as whether the operations of SKF France and SNFA France were intertwined. *Id.* We also explained that the minor changes in SNFA France personnel which resulted from its acquisition were normal in any organization. *Id.* Moreover, we explained that, even though SKF might have been attempting to increase SNFA France's global sales by integrating SNFA France into SKF's global network, there was insufficient evidence to conclude that the companies were "selling the same products to the same customers in the same channels of trade." *Id.*

During the 2006-2007 administrative review, we also analyzed SKF's acquisition of SNFA France and determined "that the post-acquisition SNFA France, and not SKF France, is the successor-in-interest to the pre-acquisition SNFA France." See *AFBs 18* and accompanying I&D Memo at Comment 12. To reach the determination that post-acquisition SNFA France was the successor-in-interest to pre-acquisition SNFA, we analyzed whether the acquisition led to changes in the management, production facilities, supplier relationships, and customer bases of SNFA France. *Id.*

Concerning management, we explained that, despite the sharing of top management, there had been no changes in SNFA France's day-to-day operations. *Id.* Concerning production facilities, we explained that, because of the considerable differences in products and product lines of SKF France and SNFA, there had been no changes to SNFA France's production facilities. *Id.* We acknowledged that, because SKF France and SNFA France had some common suppliers, SKF France had attempted to harmonize the prices it obtained from the common suppliers. *Id.* We explained that the common suppliers supplied raw materials and bearing parts which the companies further-manufactured into unique products. *Id.* Concerning customer bases, we explained that, even though SKF France anticipated having a shared point of contact for sales inquiries, the companies would maintain their own sales representatives and distribution networks. *Id.* Finally, we explained that SNFA France had not changed its name during the 2006-2007 period of review. *Id.*

On March 30, 2009, pursuant to a request by SKF Aeroengine that the Department either confirm that the 2006-2007 successorship determination encompasses the name change from SNFA France to SKF Aeroengine or initiate a changed-circumstances review to determine whether SKF Aeroengine is the successor-in-interest to SNFA France, we initiated the current changed-circumstances review. See *Ball Bearings and Parts Thereof from France: Initiation of Antidumping Duty Changed-Circumstances Review*, 74 FR 14107 (March 30, 2009). In the *Preliminary Results*, we explained that "SNFA's name change to SKF Aeroengine has not changed the operations of the company in a meaningful way." See *Preliminary Results*, 74 FR at 27281. We also explained that "SKF Aeroengine's management, production facilities, supplier relationships, and customer base are substantially unchanged from those of SNFA." *Id.* Accordingly, we preliminarily determined that "SKF Aeroengine should be assigned the same antidumping-duty treatment as SNFA." *Id.*

Discussion of Issues

1. Successorship

Comment 1: Timken argues that SKF Aeroengine has undergone significant changes since being acquired by SKF in 2006. Timken asserts that, as a result of these changes, the degree of integration between SKF Aeroengine and SKF has left SKF Aeroengine a materially dissimilar company. Accordingly, Timken argues, SKF Aeroengine is not the successor-in-interest to SNFA France. Timken asserts that, after being acquired by SKF, SKF Aeroengine began to coordinate its operations with SKF. Timken asserts that the coordination extends to joint production, sales activities, and financial matters. Timken asserts that SKF Aeroengine is responsive to the production, sales/marketing, and financial decisions of both SNFA France and SKF. Moreover, Timken argues, changes have occurred in each of the four areas that the Department analyzes in its succession analysis: management, production facilities, supplier relationships, and customer base.

Concerning management, Timken explains that SKF Aeroengine been integrated into the Aerospace and High Precision Bearing unit of SKF's Industrial Division. Timken explains further that, since being acquired by SKF, SKF Aeroengine's sales have been included in SKF's financial report. Moreover, Timken states, SNFA France no longer operates as a family business with its own financing and accounting. Timken also asserts that managers of both SKF and SNFA France play important roles in the senior management of SKF Aeroengine.

Concerning production facilities and product lines, Timken argues that, even though SKF Aeroengine has indicated that it only manufactures bearings for use in the aerospace industry, record evidence indicates that SKF Aeroengine also manufactures bearings for use in machine-tool applications. Timken states that both the aerospace industry and machine-tool applications require high-precision bearings. Timken explains that SKF's 2008 Annual Report refers to the "integration" of acquired companies. Timken argues that record evidence indicates the existence of "dual-branded SKF-SNFA products" which are a "new generation" of super-precision bearings with a "new upgraded design." Timken also explains that an SKF Press Release indicates that dual-branded super-precision bearings will replace certain existing SKF and SKF Aeroengine designs. Timken concludes that these developments indicate that, as a result of the acquisition, SKF Aeroengine has changed its product line. Timken also asserts that the existence of dual-branded bearings indicate that SKF and SKF Aeroengine produce identical products. Finally, Timken posits that SKF will change both the packaging and marking of SKF Aeroengine products.

Concerning supplier relationships, Timken explains that the record developed during the previous changed-circumstances review indicates that, because SKF Aeroengine and SKF shared a few common suppliers at the time of the acquisition, the companies attempted to harmonize prices from these common suppliers.

Concerning customer bases, Timken asserts that SKF and SKF Aeroengine have increased the integration of sales and marketing efforts since the Department's previous succession analysis.

For example, Timken states, the SNFA Group's website indicates that the combined SKF-SNFA Group entity sells SKF, SNFA, and dual-branded products. Timken concludes that this indicates that the former competitors have combined their customers. Moreover, Timken asserts, the European Commission's merger analysis indicates that, in combination with SKF, SKF Aeroengine is a stronger competitor than it was prior to its acquisition. Timken also asserts that, because the SNFA Group's website indicates that some SNFA-branded products are available through SKF's local sales channels, SKF Aeroengine has ceded some control of its sales practices to SKF. Timken argues that SKF Aeroengine and SKF France have been able to expand their respective target markets as a result of the acquisition. Finally, Timken argues that, even though SKF Aerospace and SNFA France were listed separately in 2007 Paris Air Show promotional materials, the 2009 Paris Air Show promotional materials refer only to SKF Aerospace.

In rebuttal, citing *AFBs 18* and accompanying I&D Memo at Comment 12, SKF France and SKF Aeroengine state that the Department has determined previously that "the post-acquisition SNFA France is the successor-in-interest to the pre-acquisition entity of that name." Citing *Preliminary Results*, 74 FR at 27281, SKF France and SKF Aeroengine explain that the Department has recognized that the relevant time period for analysis is the time before and after the name change. SKF France and SKF Aeroengine explain that, while Timken's discussion of pre- and post-acquisition changes are not relevant to the current proceeding, it has addressed Timken's comments concerning pre- and post-acquisition changes in the interest of thoroughness and to demonstrate that the same exact facts were before the Department in the preceding changed-circumstances review.

SKF France and SKF Aeroengine argue that Timken is incorrect in its assertion that SKF Aeroengine produces super-precision bearings and bearings for use in machine-tool applications. SKF France and SKF Aeroengine explain that, as stated in their review request, SKF Aeroengine manufactures high-precision bearings designed for use in aeroengine applications. Citing *AFBs 18* and accompanying I&D Memo at Comment 11, SKF France and SKF Aeroengine explain that the Department has determined previously that "SNFA France manufactures high-precision bearings used in aeroengine applications." SKF argues that Timken's assertion that SKF Aeroengine produces machine-tool bearings is premised on a misquotation of SKF's 2007 Annual report. Specifically, SKF France and SKF Aeroengine explain that, while the 2007 Annual Report states that SKF acquired "SNFA S.A.S. France, a leading manufacturer of bearings for aerospace and machine tool applications," the reference to SNFA S.A.S. France refers to the SNFA Group - a company headquartered in France with operations in multiple countries including France, Italy, and the United Kingdom. In other words, SKF France and SKF Aeroengine explain, the reference to SNFA S.A.S. France is not to the same company which is now SKF Aeroengine. SKF France and SKF Aeroengine also argue that Timken's conclusion that SKF Aeroengine produces super-precision bearings is not only premised on a similar error, but that the SNFA Group's website makes it clear that super-precision bearings are only produced in Italy and the United Kingdom. SKF France and SKF Aeroengine also assert that Timken has made a similar error concerning SKF France's production.

Citing *Preliminary Results*, 74 FR at 27280, SKF France and SKF Aeroengine state that the Department routinely examines management, production facilities, supplier relationships, and customer bases when conducting a successorship analysis. SKF France and SKF Aeroengine argue that, under the Department's four-factor test, SKF Aeroengine is the successor-in-interest to SNFA France. Concerning management, SKF France and SKF Aeroengine argue that record evidence demonstrates that there have been no changes to SKF Aeroengine's senior management, officers, or board of directors since the September 2007 name change and that there have been no attempts to integrate SKF Aeroengine into either SKF France or SKF. SKF France and SKF Aeroengine dispute the relevance of Timken's arguments concerning pre- and post-acquisition management changes to the current changed-circumstances review. Additionally, citing *AFBs 18* and accompanying I&D Memo at Comment 11, SKF France and SKF Aeroengine explain that the Department dismissed Timken's same arguments previously and concluded that, "while there have been minor changes in personnel in the SNFA France organization as described by Timken, such minor changes in personnel are normal in any organization."

SKF France and SKF Aeroengine argue that there have there been no changes to the production facilities or product mix of either SKF France or SKF Aeroengine since the September 2007 name change. SKF France and SKF Aeroengine reiterate that, as described above, Timken has misinterpreted record evidence to conclude that SKF Aeroengine has changed its product line and is engaged in combined product development with SKF France. Moreover, SKF France and SKF Aeroengine argue, Timken's arguments concerning possible packaging changes are nothing more than conjecture based on what has occurred with respect to SKF Aerospace which is a different company.

SKF France and SKF Aeroengine argue that Timken's only argument concerning a change in supplier relationships not only relates to the time period before and after SKF's acquisition of SNFA France but was dismissed by the Department in *AFBs 18*. Concerning customer bases, SKF France and SKF Aeroengine explain that Timken's arguments concerning pre- and post-acquisition changes were dismissed by the Department in *AFBs 18*. SKF France and SKF Aeroengine argue that Timken's arguments concerning the European Commission's pre-merger analysis are not only irrelevant to the current changed-circumstances review but are also misplaced because Timken refers to the European Commission's analysis of a proposed acquisition of the SNFA Group by another bearings manufacturer. SKF France and SKF Aeroengine also state that SKF Aeroengine has not ceded control of its sales to SKF and that the SNFA Group's website simply indicates that customers who do not have access to the SNFA Group's traditional sales channels can obtain SNFA-branded bearings from their local SKF supplier. SKF France and SKF Aeroengine argue that Timken's research does not indicate that SKF Aeroengine exhibited at the 2009 Paris Air Show and that Timken has simply assumed that SKF Aeroengine appeared at the exhibition. SKF France and SKF Aeroengine suggest that that the Department not engage in such speculation. Finally, SKF France and SKF Aeroengine conclude that, because the record evidence demonstrates that there have been no material changes to SKF Aeroengine's management, production facilities, supplier relationships, or customer bases since the September 2007 name change, the Department should affirm its preliminary determination that SKF Aeroengine is the successor-in-interest to SNFA France.

Department's position: As explained above, in *AFBs 18*, we determined that, because SKF's acquisition of SNFA France did not result in significant changes in the management, production facilities, supplier relationships, and customer bases of SNFA France, post-acquisition SNFA France is essentially the same or similar to pre-acquisition SNFA France and that post-acquisition SNFA France is the successor-in-interest to pre-acquisition SNFA France. See *AFBs 18* and accompanying I&D Memo at Comment 12. As also explained above, we initiated the current changed-circumstances review to assess the effect of the name change on operations in order to determine whether SKF Aeroengine is the successor-in-interest to SNFA France.

Consistent with our established practice, we examined changes in management, production facilities, supplier relationships, and customer bases to determine whether SKF Aeroengine is essentially the same company as SNFA France. See, e.g., *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 69941 (November 18, 2005). Because we have determined previously that post-acquisition SNFA France is the successor-in-interest to pre-acquisition SNFA France, the primary focus of our analysis in the current proceeding has been on any changes that have occurred subsequent to the name change from SNFA France to SKF Aeroengine. Nevertheless, we have also considered, to the extent necessary, issues that we analyzed as a part of our succession analysis during the 2006-2007 administrative review.

Concerning changes in management, the record evidence indicates that there have been no changes in the senior officers and boards of directors of either SKF Aeroengine or SKF France subsequent to the name change. See SKF Aeroengine's submission, dated February 6, 2009, at Exhibits 4 and 5. We considered Timken's arguments concerning changes in management in our previous succession analysis. See, e.g., *AFBs 18* and accompanying I&D Memo at Comment 12. See also Timken's factual submission, dated August 14, 2009, at Exhibit 11. Moreover, because, as discussed below, we determine that the record evidence does not support Timken's allegations that SKF France and SKF Aeroengine are engaged in joint production and that SKF Aeroengine has ceded control of its sales to SKF France, we determine that the day-to-day operational management of SKF Aeroengine is substantially the same as was that of SNFA France.

Concerning production facilities and product lines, there is no indication on the record that there have been changes to either the production facilities or product lines of SKF Aeroengine as a result of either the initial acquisition or the subsequent name change. In *AFBs 18*, we explained that "SNFA France manufactures high-precision bearings used in aeroengine applications" and that, "because of the considerable differences in products and product lines between SNFA France and the SKF companies, SNFA's production facilities have not been affected by the merger." See *AFBs 18* and accompanying I&D Memo at Comments 11 and 12.

Timken is correct that SKF's 2007 Annual Report refers to an acquired company ("SNFA S.A.S., France") as a "leading manufacturer of bearings for aerospace and machine tool applications." See Timken's factual submission, dated August 13, 2009, at page 53 of Exhibit 2. Specifically, the 2007 Annual Report refers to "SNFA S.A.S., France." The record evidence

does not support, however, Timken’s conclusion that “SNFA S.A.S., France” refers solely to the entity which is now called SKF Aeroengine.

SKF’s 2007 Annual Report explains that, in 2006, SKF acquired the “SNFA Group” by acquiring “100% of the issued share capital in the French company SNFA S.A.S.,” a company which “is headquartered in Paris, France, and has manufacturing facilities in France, Italy, and the UK.” See Timken’s factual submission, dated August 13, 2009, at page 54 of Exhibit 2.¹ Additionally, at the time of SKF’s acquisition, the SNFA Group produced bearings for the aerospace industry at its production facilities in France and produced high-precision bearings at its production facilities in Italy and the United Kingdom. See Timken’s factual submission, dated August 14, 2009, at Exhibits 1 and 5. Contrary to Timken’s allegation that “SKF has *not* referred to SKF Aeroengine machine tool products notwithstanding data available from the annual report,” the evidence indicates that, at the time of acquisition, the SNFA Group (*i.e.*, SNFA S.A.S., France) produced bearings for use in both the aerospace industry and machine-tool applications and that the facilities in France were used for the production of bearings for use solely in the aerospace industry. Timken Case Brief at 1, fn1 (emphasis in the original).

The record evidence supports SKF Aeroengine’s and SKF France’s arguments that SKF Aeroengine is not involved in joint production of super-precision bearings for use in machine-tool applications.² Specifically, the SNFA Group website explains that super-precision bearings are produced at the SNFA Group facilities in Italy and in the United Kingdom. See SKF Rebuttal Brief at 11 (quoting the SNFA Group website at <http://www.snfa.com/index.php?id=9>). Because the record evidence indicates that SKF Aeroengine is not involved in the production of super-precision bearings for use in machine-tool applications and because there is no evidence that SKF Aeroengine has changed the packaging of its products,³ we determine that SKF Aeroengine has not changed its production facilities or product lines as a result of the name change from SNFA France to SKF Aeroengine.

Concerning supplier relationships, there is no record evidence that indicates that there have been changes beyond those which we considered in our previous succession analysis. See *AFBs 18* and accompanying I&D Memo at Comment 12.

Concerning customer bases, the record evidence does not indicate that SKF and SKF Aeroengine have changed their respective customer bases or increased the integration of sales and marketing efforts. We have explained previously that SKF’s plans “to increase sales of SNFA France products by integrating SNFA France into SKF’s global sales network” is not a deciding factor. See *AFBs 18* and accompanying I&D Memo at Comment 11. Contrary to Timken’s argument,

¹ We have acknowledged previously that the SNFA Group, which was headquartered in France, had operations in multiple countries. See *Ball Bearings and Parts Thereof from Italy and the United Kingdom: Initiation of Antidumping Duty Changed-Circumstances Reviews*, 72 FR 10643, 10644 (March 9, 2007) (referring to SNFA Bearings Ltd., a producer in the United Kingdom, and Somecat S.p.A., a producer in Italy, as subsidiaries of SNFA).

² Because record evidence simply refers to SKF-SNFA dual-branded products, there is no evidence that SKF France is involved in the joint production of super-precision bearings.

³ Timken explains that its arguments concerning changes in the packaging of SKF Aeroengine bearings is premised on its understanding of what has occurred with respect to the packaging of bearings produced by SKF Aerospace, which is a company that was formerly known as Sarma. See Timken Case Brief at 11.

the SNFA Group website does not indicate that SKF Aeroengine has ceded control of its sales to SKF. Rather, the SNFA Group website indicates that the SNFA Group is a part of SKF and that customers who are not located in the same country as a member of the SNFA Group can purchase both “SNFA and dual branded SKF-SNFA super-precision bearings” through the local SKF sales channel. See SKF Rebuttal brief at 22 (quoting the SNFA Group website at <http://www.snfa.com/index.php?id=8>). This does not demonstrate that SKF Aeroengine has changed either its sales and distribution practices or customer bases in France or the United States. Finally, although Timken has presented evidence that SKF Aerospace alone was listed in 2009 Paris Air Show promotional materials, Timken has not demonstrated that SKF Aeroengine in fact appeared with SKF Aerospace or that SKF Aeroengine has changed its customer bases.

For the foregoing reasons, we determine that the name change from SNFA France to SKF Aeroengine did not result in significant changes in the management, production facilities, supplier relationships, and customer bases of SKF Aeroengine and that SKF Aeroengine operates as essentially the same company as SNFA France. Accordingly, we find that the evidence of the record of this changed-circumstances review supports a finding that SKF Aeroengine is the successor-in-interest to SNFA France.

2. Applicable Cash-Deposit Rate

Comment 2: Timken argues that SKF’s purchase of SKF Aeroengine has precipitated important changes to SKF Aeroengine. Specifically, Timken argues that, not only has SKF absorbed SKF Aeroengine’s production facilities and customers, but SKF has integrated SKF Aeroengine’s operations with its own. Accordingly, Timken argues, the Department should either assign SKF France’s cash-deposit rate to SKF Aeroengine or calculate a new blended rate based on SKF France’s cash-deposit rate and SKF Aeroengine’s revoked status.

Citing *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber From Japan*, 69 FR 61796, 61796-61798 (October 21, 2004) (*Polychloroprene Rubber*), unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 69 FR 67890 (November 22, 2004), Timken explains that the Department has previously examined the corporate structure that emerged after SDK acquired SDEM and determined that SDK’s management, corporate structure, and operations of an acquiring company were different from SDEM’s. Accordingly, Timken asserts, the Department determined that SDK should not receive the same antidumping-duty treatment as SDEM. Similarly, citing *Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber From the Republic of Korea*, 66 FR 1642, 1643 (January 9, 2001) (*Polyester Staple Fiber*), unchanged in *Notice of Final Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber From the Republic of Korea*, 66 FR 30411 (June 6, 2001), Timken argues that the Department has determined that, in a situation where Samyang, a company excluded from the antidumping duty order, formed a joint venture with SK, a company subject to the all-others rate, the joint venture could not succeed in Samyang’s excluded status. Timken explains that the Department made this determination because, even though the production facilities had not been

merged and each company maintained its own suppliers, customers, and branding, the management of each company answered to the management of the joint venture.

Citing *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Softwood Lumber From Canada*, 69 FR 55406, 55408 (September 14, 2004) (*Softwood Lumber: Canfor-Slocan CCR*), unchanged in *Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada*, 69 FR 75921 (December 20, 2004), Timken also argues that, when the Department determined that “significant components of both pre-merger Canfor’s and Slocan’s management, production facilities, supplier relationships, and customer base have been incorporated into both the post-merger Canfor and Slocan,” it is appropriate to assign the post-merger entity a cash-deposit rate reflecting a weighted average of the pre-merger entities cash-deposit rates. Finally, Timken argues that a decision allowing SKF Aeroengine to succeed to SNFA France’s revoked status would open the door to possible circumvention of the antidumping duty order.

SKF France and SKF Aeroengine argue that the Department should not depart from its normal practice in changed-circumstance reviews of assigning a company which has been determined to be a successor-in-interest to a predecessor company the predecessor’s cash-deposit rate. SKF France and SKF Aeroengine state that, to the extent that Timken’s argument is a thinly veiled argument for collapsing, the Department has rejected Timken’s collapsing arguments previously. Moreover, SKF France and SKF Aeroengine explain, a collapsing determination must be premised on specific findings and Timken has not raised those specific arguments.

SKF France and SKF Aeroengine also argue that SKF did not absorb SKF Aeroengine, establish a new entity, or combine SKF Aeroengine with SKF France. Rather, citing the *Preliminary Results*, 74 FR at 27281, SKF France and SKF Aeroengine state that the Department has concluded correctly that “SKF Aeroengine continues to operate as a separate and distinct business apart from the other SKF entities located in France.”

SKF France and SKF Aeroengine maintain that none of the cases cited by Timken supports either assigning SKF France’s cash-deposit rate to SKF Aeroengine or calculating a hybrid rate based on SKF Aeroengine’s revoked status and SKF France’s current cash-deposit rate. Concerning *Polychloroprene Rubber*, SKF France and SKF Aeroengine explain that the decision contains no discussion of either a blended or combined rate. Additionally, SKF France and SKF Aeroengine argue that, while the facts in *Polychloroprene Rubber* involved a dissolution with the creation of a new entity with new management, a new corporate structure, new customer base, and new selling functions, the current proceeding involves a name change without corresponding changes in management, structure, customer bases, or selling operations. SKF France and SKF Aeroengine argue that sharp factual distinctions between the facts in *Polychloroprene Rubber* and the current proceeding reinforce why the Department should affirm its preliminary determination that SKF Aeroengine is the successor-in-interest to SNFA France. SKF France and SKF Aeroengine argue that, unlike the situation in *Polyester Staple Fiber* which involved the creation of a 50-50 joint venture, integrated management, and integrated production facilities,

SKF Aeroengine remains a separate legal entity and that neither the name change nor SKF's acquisition of the SNFA Group resulted in any material managerial or production changes.

Concerning *Softwood Lumber: Canfor-Slocan CCR*, SKF France and SKF Aeroengine argue that, while the Department did determine that the post-merger entity was the successor-in-interest to both pre-merger entities and should therefore be assigned a cash-deposit rate reflecting the weighted average of the pre-merger entities' cash-deposit rates, subsequently the Department limited the precedential force of that determination. Specifically, citing *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 71 FR 13811 (March 17, 2006) (*Softwood Lumber CCR*), and accompanying I&D Memo at 12, SKF France and SKF Aeroengine explain that the Department stated that the "results of the Canfor-Slocan {changed-circumstances review} were based on the facts of that case and did not represent a shift by the Department in favor of finding hybrid successorship." Additionally, citing *Softwood Lumber CCR* and accompanying I&D Memo at 12, SKF France and SKF Aeroengine explain that the Department explicitly rejected the notion of abandoning "its well-established CCR methodology for a much narrower analysis" and following *Softwood Lumber: Canfor-Slocan CCR* in every changed-circumstances review in which "any remnants of both companies survive." SKF France and SKF Aeroengine argue that, not only has the Department determined previously that post-acquisition SNFA is the successor-in-interest to pre-acquisition SNFA, but that the name change was not accompanied by changes in management, production facilities, supplier relationships, or customer bases.

SKF France and SKF Aeroengine argue that the facts in the current proceeding are similar to the facts in *Certain Welded Stainless Steel Pipe From Korea; Final Results of Antidumping Duty Changed Circumstances Review*, 63 FR 16979 (April 7, 1998) (*Stainless Steel Pipe*). SKF France and SKF Aeroengine explain that, in *Stainless Steel Pipe*, the Department conducted a changed-circumstances review to determine the successorship status of SeAH Steel Corporation (SeAH) when, approximately one year after Pusan Steel Pipe (PSP) acquired the production assets of Sammi, PSP renamed the company SeAH with the result that SeAH became a part of a group of companies which also use SeAH in their names. Citing *Stainless Steel Pipe*, 63 FR at 16979-80, SKF France and SKF Aeroengine explain that the Department determined that "SeAH is the successor to PSP for the production of subject merchandise, and is not a successor to Sammi, nor a new hybrid entity." Additionally, citing *Stainless Steel Pipe*, 63 FR at 16981, SKF France and SKF Aeroengine assert that, in rejecting an argument that SeAH was a hybrid of PSP and Sammi, the Department explained that, "{a}lthough the hybrid issue may not be detailed in the preliminary results, the Department addressed it in its analysis of the management, production facilities, customers and suppliers" and "{s}ubsumed in the Department's conclusion that SeAH operates essentially the same as PSP is the conclusion that it is not a hybrid operation." Accordingly, SKF France and SKF Aeroengine conclude, because the Department has determined previously that post-acquisition SNFA is the successor-in-interest to pre-acquisition SNFA and because the name change in September 2007 did not result in any changes to SKF Aeroengine's management, production facilities, supplier relationships, or customer base, the Department should conclude that SKF Aeroengine operates essentially the same as SNFA France and, therefore, is not a hybrid operation.

Department's position: In *AFBs 18*, we determined that, because SKF's acquisition of SNFA France did not result in significant changes in the management, production facilities, supplier relationships, and customer bases of SNFA France, post-acquisition SNFA France is essentially the same or similar to pre-acquisition SNFA France and that post-acquisition SNFA France is the successor-in-interest to pre-acquisition SNFA France. See *AFBs 18* and accompanying I&D Memo at Comment 12. In *Stainless Steel Pipe*, we explained that subsumed in a determination that a successor company operates in essentially the same manner as its predecessor is the conclusion that the successor company is not a hybrid operation. See *Stainless Steel Pipe*, 63 FR at 16981. Accordingly, subsumed in our *AFBs 18* determination that post-acquisition SNFA France was the successor-in-interest to pre-acquisition SNFA France is the conclusion that post-acquisition SNFA France was not a hybrid operation.

This determination is distinguishable on a factual basis from *Polychloroprene Rubber* in which we determined that a new entity, SDK, had emerged from the dissolution of the previous SDEM-DDE joint venture. See *Polychloroprene Rubber*, 69 FR at 61797-61798. This also contrasts with our decision in *Polyester Staple Fiber* in which we determined that a newly formed joint venture was neither the successor-in-interest to either of the two individual companies of which it was comprised nor was it the successor-in-interest to both companies jointly. See *Polyester Staple Fiber*, 66 FR at 1643. The instant case is also distinct from *Softwood Lumber: Canfor-Slocan CCR* in which we determined that the facts warranted determining that the post-merger entity was the successor-in-interest to both predecessor companies. See *Softwood Lumber: Canfor-Slocan CCR*, 69 FR at 55408-55409. See also *Softwood Lumber CCR* and accompanying I&D Memo at 12 (explaining that “{t}he results of the *Canfor-Slocan CCR* were based on the facts of that case and did not represent a shift by the Department in favor of finding hybrid successorship”). In short, unlike the cases cited by Timken, the instant review does not involve any type of hybrid entity or joint venture.

As explained above, we have determined that the name change from SNFA France to SKF Aeroengine did not result in significant changes in the management, production facilities, supplier relationships, and customer bases of SKF Aeroengine and that SKF Aeroengine operates as essentially the same company as SNFA France. Subsumed in our determination that SKF Aeroengine is the successor-in-interest to SNFA France is the conclusion that SKF Aeroengine is not a hybrid operation. Accordingly, we have followed our consistent practice and assigned SKF Aeroengine the cash-deposit rate of SNFA France. See *Stainless Steel Pipe*, 63 FR at 16979. Finally, because SNFA France had been revoked from the antidumping duty order previously, it is appropriate to apply the final results of this changed-circumstances review effective as of September 3, 2007, the date of the occurrence which occasioned the changed-circumstances review. See *Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand: Final Results of Changed-Circumstances Antidumping Duty Review*, 74 FR 8904 (February 27, 2009), and accompanying I&D Memo at Comment 1.

Recommendation

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

Agree _____ Disagree _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

(Date)