

DATE: September 27, 2005

MEMORANDUM TO: Holly A. Kuga
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset
Review of the Antidumping Duty Order on Internal-Combustion
Forklift Trucks from Japan Final Results

Summary

We have analyzed the substantive response of a domestic interested party in the second sunset review of the antidumping duty order covering internal-combustion forklift trucks (forklifts) from Japan.¹ 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 in this sunset review for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margins likely to prevail

History of the Order

The Department of Commerce (the Department) published its amended final affirmative determination of sales at less than fair value (LTFV) in the *Federal Register* with respect to imports of forklifts from Japan at the following rates.²

Toyota Motor Corp	17.29
Nissan Motor Co., Ltd	51.33
Komatsu Forklift Co., Ltd	47.50
Sumitomo-Yale Co., Ltd	51.33

¹We received no responses from respondent interested parties.

²See *Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks From Japan*, 53 FR 20882 (June 7, 1988).

Toyo Umpanki Co., Ltd	51.33
Sanki Industrial Co., Ltd	13.65
Kasagi Forklift, Inc	56.81
All Others	39.45

The Department published its antidumping duty order with its amendment to the final determination.³ Since the issuance of the antidumping duty order, the Department completed four administrative reviews with respect to forklifts from Japan.⁴ There have been no changed circumstance or duty absorption reviews of this order. Duty absorption inquiries may not be conducted on pre-URAA orders. *See FAG Italia S.p.A. v. United States*, 291 F.3d 806 (Fed. Cir. 2002). However, the Department conducted a scope ruling on forklifts from Japan and determined in October 1997 that Nissan Motor Co., Ltd., and Nissan Forklift Corporation (collectively Nissan)--Model FO5-70 forklifts are not within the scope of the order.⁵

The Department conducted the first sunset review of the order on imports of forklifts from Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the same rates as found in the original investigation. *See Final Results of Expedited Sunset Review: Internal-Combustion, Industrial Forklift Trucks From Japan (First Sunset Review)*, 64 FR 42662 (August 5, 1999). The International Trade Commission (ITC) determined, pursuant to section 751(c) of the Act, that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See International Trade Commission (Investigation No. 731-TA-377 (Review)): Internal Combustion Industrial Forklift Trucks from Japan*, 65 FR 19022 (April 10, 2000) and USITC Publication 3287, Investigation No. 731-TA-377 (Review) (April 1, 2000)). Thus, the Department published the notice of continuation of this antidumping duty order. *See Notice of Continuation of Antidumping Duty Order: Internal Combustion Forklift Trucks from Japan*, 65 FR 35323 (June 2, 2000).

³See *id.*

⁴For the first administrative review, see *Internal-Combustion Industrial Forklift Trucks from Japan; Final Results of the Antidumping Duty Administrative Review*, 57 FR 3167 (January 28, 1992); *Internal-Combustion Industrial Forklift Trucks from Japan; Amendment to Final Results of the Antidumping Duty Administrative Review*, 60 FR 21499 (May 2, 1995); *Internal-Combustion Industrial Forklift Trucks from Japan; Amendment to the Final Results of the Antidumping Duty Administrative Review*, 60 FR 30518 (June 9, 1995). For the second administrative review, see *Internal-Combustion Industrial Forklift Trucks from Japan; Final Results of the Antidumping Duty Administrative Review*, 59 FR 1374 (January 10, 1994). For the third completed administrative review, see *Internal-Combustion Industrial Forklift Trucks from Japan; Final Results of the Antidumping Duty Administrative Review*, 62 FR 34216 (June 25, 1997). For the fourth completed administrative review, see *Internal-Combustion Industrial Forklift Trucks from Japan; Final Results of the Antidumping Duty Administrative Review*, 62 FR 5592 (Feb. 6, 1997) and *Internal-Combustion Industrial Forklift Trucks from Japan; Amendment to Final Results of the Antidumping Duty Administrative Review*, 62 FR 12598 (March 17, 1997).

⁵See *Notice of Scope Rulings*, 63 FR 6722 (February 10, 1998).

On March 1, 2005, the Department published the notice of initiation of the second sunset review of the antidumping duty order on forklifts from Japan pursuant to section 751(c) of the Act. *See Initiation of Five-Year (Sunset) Reviews*, 70 FR 9919 (March 1, 2005). The Department received the Notice of Intent to Participate from NACCO Materials Handling Group, Inc. (NMHG), within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations (Sunset Regulations). The domestic interested party claimed interested party status under section 771(9)(C) of the Act, as a manufacturer of the domestic like product in the United States. We received complete substantive responses from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, 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 after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to ITC the magnitude of the margins of dumping likely to prevail if the order was revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

NMHG believes that revocation of this antidumping duty order would be likely to lead to a continuation or recurrence of dumping by the Japanese manufacturers, producers, and exporters of the subject merchandise due to continued dumping. *See NMHG Substantive Response (NMHG Response) (March 31, 2005) at 7.* NMHG contends that the order should remain in effect at levels above *de minimis* for all manufacturers, producers and exporters of the subject merchandise. *See NMHG Response at 11-12.*

NMHG asserts that the same trends that existed during the first sunset review still continue during this period of review; therefore, the Department should conclude that revocation of this antidumping duty order is likely to lead to recurrence of dumping. NMHG argues that since the imposition of the original order, a dramatic decline in imports of forklifts from Japan consequent to the antidumping duty order and subsequent administrative reviews, in combination with the fact that Japanese manufacturers and exporters continued to dump after the order was issued, are a strong indication, that dumping in the United States is likely to recur should the

order be revoked. NMHG reports that in 1987, before the order took effect, 23,730 forklifts were imported into the United States. According to NMHG, the first year administrative review indicated that 9,522 forklifts were imported in 1998, but the ITC in the last sunset review found that only 18 of the 9,522 forklifts imported in 1998 were subject merchandise.⁶ NMHG states that the Harmonized Tariff System (HTS) item numbers for forklifts includes both subject and nonsubject products. Based on experience with the import data in the first sunset review, NMHG observes that although 12,340 forklifts from Japan were imported in 2004, this recent data does not properly reflect the actual imports of subject merchandise which it believes are more limited. *See* NMHG Response at 9.

NMHG states that in the four administrative reviews on forklifts from Japan that have been completed since the order was issued, all of the respondents subject to the reviews were found to be dumping. *See* NMHG Response at 9. NMHG observes that the dumping margin of one of the largest Japanese producers, Toyota, found in the most recent administrative review, substantially increased from the investigation rate. *See id.* at 9-10.

Department's Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the Statement of Administrative Action (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. 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.

In addition, pursuant to 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.

Using statistics provided by the ITC Dataweb (see attached) for the two HTS item numbers referenced in the scope of the order that represent assembled forklifts, the Department finds in the period 2000 - 2004 that imports from Japan continued, but at significantly lower levels than existed in the period before the issuance of the order. *See* NMHG Response at Table 1 showing statistics from First Five Year Review, USITC Pub. 3287 at I-2 and Table 2. For imports covered by HTS item number 8427.90.00, "trucks fitted with lifting or handling equipment, nesi," the level since the first sunset review (the period 2000-2004) has fluctuated with a low of 2,295 units in 2003 and a high of 10,398 units in 2004. *See* attached Dataweb import statistics. For imports covered by HTS item number 8427.20.00, "Self-propelled trucks

⁶ Investigation No. 731-TA-377 (Review), USITC Pub. 3287 at I-2 (April 2002)

not powered by an electric motor fitted with lifting and handling equipment,” we looked at each of the two sub-categories: HTS item number 8427.20.40, “Rider-type, counterbalanced fork-lift trucks,” and HTS item number 8427.20.80 “Other.” Annual shipments for HTS item number 8427.20.40 between 2000 and 2004 ranged from a high of 2,930 units in 2000 to a low of 1,327 units. Annual shipments for HTS item numbers 8427.20.80 from 2000 to 2004 ranged from a high of 277 units in 2000 to a low of 101 units in 2004. *See id.* In the most recent five-year period, we found that 2004 had the highest overall imports of assembled forklifts covered by all of these HTS item numbers with a total of 12,340 units. We note that as NMHG has noted, it is possible that only a portion of the forklifts imported under these HTS item numbers represent subject merchandise because the HTS item numbers are not limited to forklifts falling within the scope.

As discussed in the SAA at 890, and the House Report at 63-64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. Dumping margins above *de minimis* levels continue to exist for shipments of the subject merchandise from all Japanese manufacturers/exporters, based on the amended final results of the most recently completed review.⁷

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates for exports of the subject merchandise by all known Japanese manufacturers and exporters exceed *de minimis* levels. Therefore, given that dumping has continued over the life of the order, and absent argument and evidence to the contrary (respondent interested parties did not participate in any way in this review before the Department), the Department determines that dumping is likely to continue if the order were revoked.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

NMHG argues that, with the exception of Toyota, the margins in the original investigation are probative of the behavior of Japanese forklift producers/exporters. NMHG asserts that Toyota's dumping at an even higher rate after the imposition of the order is compelling evidence that this respondent would dump at least to the same degree without the discipline of the antidumping duty order if revocation was to be granted (*see* NMHG Response at 11-12). In its substantive response NMHG argues that the Department should, therefore, use in its report to the ITC, Toyota's 47.79 percent margin calculated in the most recent administrative review⁸ instead of the 17.29 percent margin from the original investigation. NMHG

⁷*See Internal-Combustion Industrial Forklift Trucks from Japan; Amendment to Final Results of the Antidumping Duty Administrative Review*, 62 FR 12598 (March 17, 1997).

⁸*See id.*

recommends the Department report to the ITC the following dumping margins:

Toyota Motor Corp	47.79
Nissan Motor Co., Ltd	51.33
Komatsu Forklift Co., Ltd	47.50
Sumitomo-Yale Co., Ltd	51.33
Toyo Umpanki Co., Ltd	51.33
Sanki Industrial Co., Ltd	13.65
Kasagi Forklift, Inc	56.81
All Others	39.45

Department's Position

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company. 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. *See* Section 752(c)(3) of the Act; and SAA at 890. 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.

Since the first sunset review, the Department has not conducted any administrative reviews for forklifts from Japan. Therefore, the Department must determine the appropriate rates to report to the ITC regarding forklifts from Japan based on the margins from the original investigation and margins from the administrative reviews before the first sunset review. With respect to the behavior of Japanese forklift producers/exporters other than Toyota, the Department finds that the margins in the original investigation are probative of their behavior if the order were to be revoked given that these rates reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. Thus, for all Japanese forklift producers/exporters other than Toyota, the Department will report to the ITC these same margins as listed in the Final Results of Review section.

With respect to Toyota’s magnitude of dumping, we have adopted the analysis from the first sunset review.⁹ In that review, we disagreed with the domestic party’s assertion that we should use the most recently calculated margin for Toyota simply because it is higher than the original margin. Normally we consider investigation rates as being the most probative of a company’s potential to dump outside the discipline of an order. *See, e.g. Brass Sheet and Strip from Brazil, Canada, France, Italy and Japan; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 70 FR 45650 (August 8, 2005) and accompanying Issues and Decision Memorandum (Decision Memo) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import

⁹See *First Sunset Review* 42664-42665.

Administration (August 1, 2005) at 9. However, if we can establish a pattern of increased dumping for a particular respondent after the imposition of the order, we will consider a higher rate. In the first sunset review, we reviewed the level of imports and Toyota's dumping margins over the life of the order in order to determine if such a pattern existed. As Toyota did not participate in the first sunset review, we did not have company-specific export volume and value data, therefore, we relied on publicly available U.S. customs data. Specifically, we found that import volumes of subject merchandise decreased after the issuance of the order through 1992 (based on import statistics provided by NMHG in the first sunset review). Further, we found that imports began increasing in 1993, and then increased significantly from 1993 to 1994, and again, from 1994 to 1995. During these same time periods, Toyota's dumping margin increased from a low of 6.87 percent to 31.58 percent and again to 47.79 percent. In addition, we noted that the two other Japanese producers/exporters subject to the administrative reviews covering these periods were found not to have made any shipments. Therefore, in the first Sunset Review, we selected order-wide import data as an appropriate surrogate for Toyota's own volume and value data

A company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order. In addition, the Department will normally consider market share. However, in the first sunset review, absent information on market share, and absent argument or evidence to the contrary, we relied on import values as a surrogate measure of Toyota's market share. Therefore, in light of the correlation between an increase in imports and an increase in Toyota's dumping margins, we found Toyota's more recent rate from the last administrative review to be the most probative of Toyota's behavior if the order was revoked and reported this rate to the ITC in the first sunset review.¹⁰ Since the fourth administrative review in which the Department calculated a 47.79 percent margin for Toyota, the Department has not conducted an annual administrative review on forklifts from Japan and the cash deposit rates established in the fourth review have remained in force. The Department thus does not have more recent respondent-specific information on Toyota's sales or those of any other Japanese producer/exporter given also that no Japanese producer/exporter has elected to participate in this current sunset review. Therefore, subject to our additional analysis from the first sunset review, the Department continues to find that Toyota's rate from the last administrative review is the most probative of Toyota's behavior if the order were revoked and we will report this rate to the ITC.

Final Results of Review

We determine that revocation of the antidumping duty order on forklifts from Japan would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Toyota Motor Corp	47.79

¹⁰See *id.*

Nissan Motor Co., Ltd	51.33
Komatsu Forklift Co., Ltd	47.50
Sumitomo-Yale Co., Ltd	51.33
Toyo Umpanki Co., Ltd	51.33
Sanki Industrial Co., Ltd	13.65
Kasagi Forklift, Inc	56.81
All Others	39.45

Recommendation

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

AGREE _____

DISAGREE _____

Holly A. Kuga
Acting Assistant Secretary
for Import Administration

(Date)