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Sunset Reviews
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proprietary information in
attachments 2 & 3 omitted)**
AD/CVD 5: FWA

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

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Full Sunset Reviews of
the Antidumping Duty Orders on Ball Bearings and Parts Thereof
from Japan and Singapore; Final Results

Summary

We have analyzed the substantive responses, case briefs, and rebuttals of interested parties in the full sunset reviews of the antidumping duty orders on ball bearings and parts thereof from Japan and Singapore. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum. Below is the complete list of the issues in these full sunset reviews for which we received comments by parties:

Comment 1: Likelihood of Continuation or Recurrence of Dumping
Comment 2: Magnitude of the Margin Likely to Prevail
Comment 3: Support of Domestic Industry

History of the Orders

The Department of Commerce (the Department) published its less-than-fair-value (LTFV) determinations on antifriction bearings from Japan on May 3, 1989. See Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan, 54 FR 19101 (May 3, 1989); see also Final Determination of Sales at Less Than Fair Value: Ball Bearings and Parts Thereof from Singapore, 54 FR 19112 (May 3, 1989). On December 28, 2005, the Department published the preliminary results of the full sunset reviews of the antidumping duty orders on ball bearings from Japan and Singapore. See Ball Bearings and Parts Thereof From Japan and Singapore; Five-Year Sunset Reviews of Antidumping Duty Orders; Preliminary Results (Preliminary Sunset Results), 70 FR 76754 (December 28, 2005), and the accompanying Issues and Decision Memorandum for the Full

Sunset Review of the Antidumping Duty Orders on Ball Bearings from Japan and Singapore: Preliminary Results (Preliminary Sunset Results) dated December 28, 2005.¹ In our Preliminary Sunset Results, we announced our intent to report the following weighted-average dumping margins to the International Trade Commission (ITC) as the margins likely to prevail if the orders were revoked:

<u>Japan</u>	<u>Margin (%)</u>
Koyo Seiko Co., Ltd.	73.55
Minebea Co., Ltd.	106.61
Nachi-Fujikoshi Corp.	48.69
NSK Ltd.	42.99
NTN Corp.	21.36
All Others	45.83
<u>Singapore</u>	
NMB/Pelmec	25.08
All Others	25.08

On January 27, 2006, the Department received case briefs from the following parties:

Japan

Koyo Seiko Co., Ltd. and Koyo Corporation of USA (collectively, Koyo)
NTN Corporation and American NTN Bearing Manufacture Corporation (collectively, NTN)
NSK Corp. and NSK Ltd. (collectively, NSK)

Singapore

NMB Singapore Ltd. and Pelmec Industries (Pte.) Ltd. (collectively, NMB/Pelmec)

On February 1, 2006, the Department received a rebuttal brief from the Timken Company (Timken), Pacamor Kubar Bearings, and RBC Bearings (collectively, the domestic interested parties).

Based on the arguments submitted by the parties and the evidence on the record, we have made some changes to our preliminary findings for these Final Results. For Japanese respondents NTN, NSK, and Koyo, we will report the respective most recently calculated margin to the ITC. See Discussion of the Issues below for further information.

Discussion of the Issues

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended (the Act), the Department is conducting these sunset reviews to determine whether revocation of the

¹For a full discussion of the history of these orders prior to the preliminary results of these sunset reviews, see the December 28, 2005, decision memorandum.

antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigations and subsequent reviews and the volume of imports of the subject merchandise for the periods before and after the issuance of the antidumping orders. In addition, section 752(c)(3) of the Act provides that the Department shall provide the ITC with the magnitude of the margin of dumping likely to prevail if the orders are revoked.

We received comments from the parties on the following issues and address them below:

Comment 1: Likelihood of Continuation or Recurrence of Dumping

Comment 2: Magnitude of the Margin Likely to Prevail

Comment 3: Support of Domestic Industry

Comment 1: Likelihood of Continuation or Recurrence of Dumping
Japan

NTN, NSK, and Koyo (collectively, the respondents) contend that the Department should revoke the antidumping duty order on ball bearings from Japan. The respondents dispute the methodology the Department used to calculate the margins in the investigation and subsequent administrative reviews of this order. According to the respondents, the Department's LTFV analysis in the investigation did not offset LTFV sales with fair-value sales but rather "zeroed" these sales when applying its average-to-average methodology during the investigation.

The respondents argue that if the Department had used an average-to-average methodology that offsets LTFV sales fully with fair-value sales for the period May 1999 through April 2004, then the Department would likely find that sales by NSK, NTN, and Koyo are not being dumped.² As such, the respondents argue but for the application of the Department's margin-calculation methodology the order would be revoked. NSK argues further that there "is no written policy guidance of general application at Commerce that commands the agency to engage in {the disputed methodology}."³ Therefore, the respondents submit that the Department should not base its likelihood determination on the dumping margins it calculated in the investigation or the margins it calculated in the subsequent antidumping administrative reviews.⁴

The respondents also contend that the practice of not offsetting LTFV sales with fair-value sales violates U.S. antidumping law and international obligations under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (Antidumping

² NSK Brief at 2- 4, NTN Brief at 2-5, and Koyo Brief at 2-7.

³ See NSK Brief at 7.

⁴ See NSK Brief at 7, Koyo Brief at 8, and NTN Brief at 7.

Agreement).⁵ Specifically, the respondents argue that this practice is at odds with certain decisions by the World Trade Organization (WTO).⁶

Timken argues that the methodology the Department used to calculate the investigation margins and subsequent administrative review margins has been upheld repeatedly by the Court of International Trade (CIT) and Court of Appeals for the Federal Circuit (CAFC).⁷ Timken also argues that the WTO decisions are not binding on the Department.⁸ Thus, Timken asserts, pursuant to applicable United States law, the Department should affirm its conclusion in the Preliminary Sunset Results and continue to find that revocation of the order would likely lead to dumping.⁹

Department's Position: 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. 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.¹⁰ 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.¹¹

⁵ See NSK Brief at 5-7, NTN Brief at 3-5, and Koyo Brief at 5-7.

⁶ The respondents cite United States - Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R (August 11, 2004), European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R (March 1, 2001) (EC Bed Linen), and United States - Sunset Review of Anti-dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan, WT/DS244/AB/R (December 15, 2003).

⁷ The domestic interested parties cite to Timken Co. v. United States, 354 F.3d 1334 (Fed. Cir. 2004), and Corus Staal BV v. Department of Commerce, 395 F.3d 1343 (Fed. Cir. 2005).

⁸ The domestic interested parties cite to Corus Staal BV v. Department of Commerce, 395 F.3d 1343 (Fed. Cir. 2005) (WTO decisions "are not binding on the United States much less this Court."), and Timken Co. v. United States, 354 F.3d 1334, 1345 (Fed. Cir. 2004) ("In light of the fact that Commerce's 'longstanding and consistent administrative interpretation is entitled to considerable weight'...we refuse to overturn the (disputed methodology) based on EC-Bed Linen.").

⁹ See Timken Rebuttal Brief at 8-9.

¹⁰ Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 at 889.

¹¹ SAA at 889.

The calculated margins in the investigation and fifteen subsequent antidumping administrative reviews for ball bearings from Japan have been above *de minimis* for NSK, NTN, and Koyo.¹² Given that dumping continued with the discipline of the orders in place, it is reasonable to assume dumping would continue if the orders were removed. Therefore, we find that revocation of the orders would likely lead to continuation of dumping.

We also disagree with the respondents' claims that the margins we calculated during the original investigation and subsequent antidumping administrative reviews are invalid. The respondents argue that, but for the margin-calculation methodology, all margins for all respondents determined in the investigation and subsequent administrative reviews would be zero or *de minimis*.¹³ Notably, the respondents do not cite to any evidence on the record of this sunset review that would substantiate such claims. The respondents proffer only conclusory statements, and NSK offers hypothetical weighted-average margins, without any record evidence to support their assertions.¹⁴ Moreover, there is no evidence that these assertions by NSK, NTN, and Koyo's - presumably about their previously calculated dumping margins - vitiate evidence of dumping by other Japanese exporters such as Nankai Seiko Ltd., Sapporo Precision Inc., Nippon Pillow Block Company, Ltd., and Nachi-Fujikoshi Corp. who are not participating in this sunset review. See Ball Bearings and Parts Thereof from Japan, et. al., Final Results of Antidumping Duty Administrative Reviews, 70 FR 54711 (September 16, 2005).

Finally, the respondents' reliance on the WTO Appellate Body findings is inapposite. Congress made clear that reports issued by WTO panels or the Appellate Body "will not have any power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO Panel recommendation and, if so, how to implement it."¹⁵ Unless and until such methodology is changed, the Department's methodology remains a reasonable interpretation of the statute. The CAFC has ruled that the Department's margin-calculation methodology is a reasonable interpretation of the statute.¹⁶ Given that dumping has continued over the life of the order the Department determines that dumping is likely to continue if the order were revoked.

Singapore

In its case brief, NMB/Pelmec restated its argument from its July 1, 2005, substantive response and presented no new arguments. NMB/Pelmec argues that revocation of the antidumping duty order on ball bearings from Singapore is not likely to lead to continuation or recurrence of

¹² See Attachment 1.

¹³ NSK at 4.

¹⁴ NSK Brief at 4-5, NTN Brief at 3-4, and Koyo Brief at 2-7.

¹⁵ SAA at 859.

¹⁶ See *Timken Co. vs. United States*, 354 F.3d 1334 (Fed. Cir. 2004) at 1342, and *Corus Staal II* at 1343.

dumping. NMB/Pelmecc contends that the Department's fair-value analysis includes results for those U.S. sales in which the U.S. price was below normal value but does not include the results for those U.S. sales in which the U.S. price was above normal value. NMB/Pelmecc argues that this practice violates U.S. antidumping law and international obligations. Further, NMB/Pelmecc states that, in order for the United States to avoid rendering another sunset determination inconsistent with the United States' international obligations, the Department must disregard the margins calculated in the original investigation and subsequent administrative reviews. Moreover, NMB/Pelmecc contends, the Department must recalculate the margins using a different methodology, one that incorporates results for U.S. sales where U.S. price was above normal value. NMB/Pelmecc argues that such a methodology would reveal zero margins for NMB/Pelmecc over the past several administrative reviews. Therefore, NMB/Pelmecc contends, no recurrence or continuation of dumping will occur if the order on ball bearings from Singapore is revoked.

Timken argues that the methodology the Department used to calculate the investigation margins, and subsequent administrative review margins, has been upheld repeatedly by the CIT and CAFC. Timken comments that the WTO decisions are not binding on the Department. Thus, Timken asserts, pursuant to applicable U.S. law, the Department should affirm its conclusion in the Preliminary Sunset Results and continue to find that revocation of the order would likely lead to dumping.

Department's Position: For the reasons we discuss above in response to the comments of the Japanese respondents, we affirm our decision in the Preliminary Sunset Results. The rates we calculated in the investigation for NMB/Pelmecc and in subsequent administrative reviews are valid and the methodology we used to derive the margins was reasonable and consistent with U.S. law. We also find that NMB/Pelmecc has continued to dump subject merchandise at levels above *de minimis* since the issuance of the order. As such, the Department continues to find that revocation of the order is likely to lead to continuation or recurrence or dumping.

Comment 2: Magnitude of the Margin Likely to Prevail
Japan

The respondents argue that, should the Department find affirmatively that revocation of the order would likely lead to continuation or recurrence of dumping, the Department should provide the ITC with more recently calculated margins. The respondents argue that the margins from the investigation do not reflect their behavior without the discipline of the order in place.

Koyo argues that the margin the Department found in the investigation is not an appropriate measure of the magnitude of the margin likely to prevail. Koyo argues that its investigation margin was based in part on best information available¹⁷ and, therefore, not an accurate measure of Koyo's degree of dumping. In addition, Koyo argues, its average volumes of imports over the

¹⁷ Amended in 1994 as "facts available." See section 776 of the Act.

last five years have remained steady or increased.¹⁸

NSK argues that the most appropriate margins are the margins the Department calculated for NSK in the 2003-2004 period of review (POR) because those margins replicate the most accurate assessment of possible future dumping if the order were revoked.¹⁹ NSK contends there have been significant changes to the antidumping duty statute since the imposition of the order, the investigation margin was based on best information available, import volumes have remained steady or increased, and NSK's dumping margin has declined over the life of the order.²⁰

NTN also requests that the Department provide the ITC with a more recently calculated margin. NTN argues that its import volumes have remained steady or increased and its dumping margins have declined steadily over the life of the order.²¹

In its rebuttal brief, the domestic interested parties request that the Department report to the ITC the margins that were determined in the final determination in the original investigation in accordance with the Department's Preliminary Sunset Results. The domestic interested parties argue that there is insufficient evidence to support the respondents' claims regarding import levels. They point to the trend of declining import levels by weight and the increase of Japan-manufactured ball bearings exported to other markets as proof that dumping would be likely to continue should the order be revoked. Therefore, the domestic interested parties urge that the Department uphold its findings in the Preliminary Sunset Results and report to the ITC the margins calculated for the investigation.

Department's Position:

In a review conducted under section 752(c) of the Act the Department shall provide the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. When considering the magnitude of the margin likely to prevail, normally the Department will provide to the ITC the margin that was determined in the final determination in the original investigation.²² The Department may provide a more recently calculated margin for a particular company, however, where declining (or zero or *de minimis*) dumping margins are accompanied by steady or increasing imports which would reflect that exporters are likely to dump at lower

¹⁸ Koyo Brief at 10; Koyo's Revised July 1, 2005, Response to the Department's Notice of Initiation at 12-15, submitted on September 15, 2005.

¹⁹ See NSK Brief at 16.

²⁰ NSK Brief at 9-10; NSK Revised Substantive Response to the Department's Notice of Initiation at 11-12, submitted on September 15, 2005.

²¹ See NTN Brief at 6; NTN Revised Substantive Response to the Department's Notice of Initiation at 6-7, submitted on September 15, 2005.

²² See SAA at 890; Final Results of Expedited Sunset Reviews: Antifriction Bearings From Japan, 64 FR 60275, 60279 (November 4, 1999).

rates found in a more recent review.²³ Similarly, if an exporter chooses to increase dumping in order to increase or maintain market share, the Department may provide the ITC with an increased margin that is more representative of that exporter's behavior in the absence of an order.

The Department will consider using a more recently calculated margin in response to argument from an interested party.²⁴ Further, in determining whether a more recently calculated margin is probative of an exporter's behavior absent the discipline of an order, we will normally consider the company's relative market share, with such information to be provided by the parties.²⁵ It is clear, therefore, that, in determining whether a more recently calculated margin is probative of the behavior of exporters were the order revoked, the Department considers company-specific exports and company-specific margins. When making such a determination, the Department has expressed a clear preference for market-share information.²⁶

Although we make likelihood determinations on an order-wide basis in sunset reviews, for determining the magnitude of the margin likely to prevail we report company-specific margins to the ITC.²⁷ Therefore, it is appropriate that our determinations regarding the magnitude of the margin likely to prevail be based on company-specific information.

For the period covered by this sunset review, there have been five completed administrative reviews of the antidumping duty order on ball bearings from Japan. The various margins we calculated for NSK, NTN, and Koyo in these reviews are as follows:²⁸

²³ SAA at 889-90.

²⁴ Final Results of Expedited Sunset Reviews: Antifriction Bearings From Japan, 64 FR 60275, 60279 (November 4, 1999).

²⁵ Id.

²⁶ See, e.g., Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden, 63 FR 67658 (December 8, 1998), and Results of Expedited Sunset Reviews: Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China, 64 FR 30310 (June 7, 1999).

²⁷ Final Results of Expedited Sunset Reviews: Antifriction Bearings From Japan, 64 FR 60275, 60279 (November 4, 1999).

²⁸ See attachment 1. Margin information is based on the information provided to the Department by each company in their respective September 15, 2005, substantive response to our notice of initiation. See Koyo Revised Substantive Response to the Department's Notice of Initiation, NSK's Substantive Response to the Department's Notice of Initiation, and NTN's Substantive Response to the Department's Notice of Initiation.

REVIEW	POR	Koyo	NSK	NTN
15	03-04	12.78	8.28	5.93
14	02-03	5.56	2.46	2.74
13	01-02	4.98	2.68	4.51
12	00-01	7.70	6.07	9.72
11	99-00	10.10	4.22	9.16
INVESTIGATION		73.55	42.99	21.36

The Department has calculated margins for Koyo ranging between 4.98 and 12.78 percent over the past five reviews, considerably lower than the investigation rate of 73.55 percent. Likewise, NSK's margins have ranged from 2.46 to 8.28 percent which are significantly lower than the 42.99 percent investigation rate. NTN's margins over the past five years have ranged between 2.74 and 9.34 percent which are significantly lower than the 21.36 percent investigation margin. Therefore, the record shows that, for the period covered by this second sunset review, the margins for Koyo, NSK, and NTN declined when compared to the investigation margins.

Additionally, margins for Koyo, NSK, and NTN have decreased over the life of the order. The margins that we have calculated for Koyo over the past fifteen administrative reviews has fluctuated between a low of 4.98 percent and a high of 18.6 percent, which represent considerably lower margins than the investigation margin for Koyo of 73.55 percent. Likewise, NSK's margins have ranged from *de minimis* (0.76) to 18.88 percent. The LTFV investigation margin for NSK was 42.99 percent. Last, the LTFV investigation margin for NTN was 21.36.²⁹ Subsequent to the investigation NTN's margins have never been higher than 14.33 percent and NTN's margin has been under 10 percent for fourteen of the fifteen complete administrative reviews we have conducted. Therefore, each Japanese respondent has demonstrated decreased margins with the discipline of the order in place.

The Department also analyzed each respondent's submission that reported its relative market share of imports of subject merchandise from Japan to the United States for the five-year sunset review period.³⁰ NSK's import volumes since the issuance of the order and market share of imports, as measured in complete bearings, have remained steady or increased during the sunset review period.³¹ Likewise, NTN has maintained the level of its market share of imports and import volumes since the issuance of the order over the past five years with negligible

²⁹ See attachment 1.

³⁰ See attachment 2, citing information from Koyo Revised Substantive Response to the Department's Notice of Initiation at 12-15, NSK Substantive Response to the Department's Notice of Initiation at 11-12, and NTN Substantive Response to the Department's Notice of Initiation at 6-7.

³¹ NSK Revised Substantive Response to the Department's Notice of Initiation at 11; see also attachments 2 and 3.

fluctuations.³² Koyo's market share of imports and level of imports since the issuance of the order also have remained steady over the same five-year period.³³ The information provided by the parties reflects a steady level of exports of subject merchandise to the United States from Japan.³⁴

Finally, the respondents argue that we should report a more recently calculated margin to the ITC on the basis of significant changes to the antidumping duty statute since the imposition of the order and because the investigation margin calculation included some application of best information available. As stated above, we find that a more recently calculated margin is an appropriate indicator of the magnitude of the margin likely to prevail because the respondents demonstrated steady or increased import volumes and declining dumping margins over the life of the order. There is no basis to reject margins we calculated in the investigation because of subsequent changes in methodology because such changes do not invalidate margins calculated under a prior methodology. See Final Results of Expedited Sunset Reviews: Antifriction Bearings From Japan, 64 FR 60275, 60279 (November 4, 1999). In addition, the margin from the investigation that was based, in part, on facts available is not *per se* invalid. See Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan, 54 FR 19101 (May 3, 1989).

Based on the above analysis, we conclude that NSK, NTN, and Koyo have demonstrated that it would be more appropriate to provide the ITC with a more recently calculated margin for the magnitude of the margin likely to prevail. Accordingly, we will report to the ITC the margins indicated in the Final Results of the Reviews section of this notice.

Singapore

NMB/Pelmec argues that the Department should report a company-specific margin of zero to the ITC. NMB/Pelmec bases this assertion on its contention that all its margins the Department has calculated used a methodology that contravenes U.S. law. For the reasons we discussed in response to Comment 1, the methodology we used to calculate NMB/Pelmec's margins in the investigation and subsequent reviews is consistent with U.S. law. Therefore for NMB/Pelmec, in keeping with our normal practice, we will provide to the ITC the margin from the investigation.

Comment 3: Support of Domestic Industry

NSK argues there is an overall lack of support among the domestic industry for the continuation of the orders on ball bearings. NSK observes that, during the first sunset reviews of ball

³² NTN Revised Substantive Response to the Department's Notice of Initiation at 6-7; see also attachments 2 and 3.

³³ Koyo Revised Substantive Response to the Department's Notice of Initiation at 13; see also attachments 2 and 3.

³⁴ See attachment 4, Japanese MOF Trade Statistics: Japanese Exports of Ball Bearings.

bearings, 57.5 percent of domestic producers by value of U.S. shipments supported revocation of the antidumping duty orders on ball bearings from the various countries while only 31 percent supported continuation of the orders. Therefore, because of an overall lack of support among the domestic industry for continuation of the antidumping duty orders on ball bearings from Japan and Singapore, NSK argues, the Department should revoke the orders on ball bearings from the subject countries.³⁵

The domestic interested parties urge the Department to reject the request to revoke the orders based on an overall lack of support from domestic industry. First, the domestic interested parties state that the Department has already found adequate domestic industry support in the Preliminary Sunset Results to continue these reviews. Second, according to the domestic interested parties, the issue of domestic industry support is not relevant to a sunset review or to the inquiry into the existence of or level of dumping if the orders were revoked.³⁶

Department's Position:

We disagree with the contention by NSK that the orders should be revoked because there is an overall lack of support among the domestic industry for their continuation. As we stated in our Preliminary Sunset Results, the Sunset Regulations (19 CFR 351.218) do not contain a support threshold that the domestic industry must meet in order for us to conduct a sunset review. Rather, the Sunset Regulations require a domestic interested party to file a valid notice of intent to participate within 15 days of the publication of the notice of initiation,³⁷ that the notice of intent to participate contain certain required information,³⁸ and that the domestic interested party subsequently file a substantive response.³⁹ In these reviews, the Timken Company, Pacamor Kubar Bearings, and RBC Bearings filed timely notices of intent to participate followed by substantive responses. Therefore, under our regulations, there is no basis for revocation of the sunset reviews for lack of domestic industry support.

³⁵ NSK Brief at 11.

³⁶ See Timken Rebuttal Brief at p. 21.

³⁷ 19 CFR 351.218(d)(1)(i).

³⁸ 19 CFR 351.218(d)(1)(ii).

³⁹ 19 CFR 351.218(d)(3).

ATTACHMENT 1

ATTACHMENT 2

CANNOT BE SUMMARIZED
INTO A PUBLIC VERSION

ATTACHMENT 3

CANNOT BE SUMMARIZED
INTO A PUBLIC VERSION

ATTACHMENT 4