

FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND

SUMMARY

The Department of Commerce has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade pursuant to the decision by the U.S. Court of Appeals for the Federal Circuit in *NMB Singapore Ltd. v. United States*, 557 F.3d 1316 (CAFC 2009). In accordance with the Court's instructions, we have determined that the revocation of the antidumping duty order on ball bearings and parts thereof from Japan with respect to JTEKT Corporation, NSK Ltd., and NTN Corporation would likely lead to continuation or recurrence of dumping at the margins that we determined for these three companies in the 1989 less-than-fair-value investigation.

BACKGROUND

On May 4, 2006, the Department of Commerce (the Department) published the final results of the second sunset review of the antidumping duty order on ball bearings and parts thereof from Japan. See *Ball Bearings and Parts Thereof from Japan and Singapore; Five-year Sunset Reviews of Antidumping Duty Orders; Final Results*, 71 FR 26321 (May 4, 2006), as amended in *Ball Bearings and Parts Thereof from Japan; Five-year Sunset Review of Antidumping Duty Order: Amended Final Results*, 71 FR 30378 (May 26, 2006) (collectively *Final Results*). The Department published the antidumping duty order subject to this review on May 15, 1989. See *Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings, and Parts Thereof From Japan*, 54 FR 20904 (May 15, 1989).

In the *Final Results*, the Department determined that the revocation of the antidumping duty order on ball bearings and parts thereof from Japan for JTEKT Corporation (JTEKT),¹ NSK Ltd. (NSK), and NTN Corporation (NTN) would likely lead to the continuation or recurrence of dumping at the margins that the Department found for these three companies in the 2003-04 administrative review of the antidumping duty order on ball bearings and parts thereof from Japan. See *Final Results* and *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 70 FR 54711, 54713 (September 16, 2005) (*AFBs 15*).

In *NMB Singapore Ltd. v. United States*, 533 F. Supp. 2d 1244 (CIT 2007) (*NMB Singapore Ltd. I*), the U.S. Court of International Trade (CIT) affirmed the *Final Results*. In *NMB Singapore Ltd. v. United States*, 557 F.3d 1316 (CAFC 2009) (*NMB Singapore Ltd. II*), the U.S. Court of Appeals for the Federal Circuit (CAFC) upheld the CIT's decision affirming the Department's decision to leave the antidumping duty order in place but the CAFC vacated and remanded the CIT's decision to uphold the Department's determination that the revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins the Department calculated for these companies in *AFBs 15*.

The CAFC stated that, in determining the dumping margins likely to exist if the antidumping duty order were revoked, the Department did not follow its normal practice of considering quantities of subject merchandise imported into the United States before the issuance of the antidumping duty order. The CAFC directed the Department to use the pre-order quantity of imports of subject merchandise in determining the antidumping duty margins for the three companies in the second sunset review or, in the alternative, to provide a sufficient and reasoned

¹ JTEKT was known formerly as Koyo Seiko Co., Ltd. (Koyo Seiko), until the publication of the *Final Results*.

analysis explaining its departure from its normal practice. See *NMB Singapore Ltd. II*, 557 F.3d at 1326-29.

The CAFC also found that the Department did not state whether it was able to determine the U.S. market share of each of these Japanese companies from record information provided by the parties in order to determine whether the revocation of the antidumping duty order would likely lead to the continuation or recurrence of dumping at the margins that the Department found for these three companies in *AFBs 15*. The CAFC directed the Department to clarify its finding on the U.S. market share of each of these companies. See *NMB Singapore Ltd. II*, 557 F.3d at 1329-31.

On April 13, 2009, the CAFC issued *NMB Singapore Ltd. II* as a mandate. On April 20, 2009, the CIT issued the order remanding *NMB Singapore Ltd. II* to the Department for further proceedings consistent with the CAFC's mandate. See *NMB Singapore Ltd. v. United States*, Consol. Court No. 06-00182 (April 20, 2009).

ANALYSIS

Pursuant to the remand order of the CIT, the Department has taken into consideration the pre-order quantities of imports of subject merchandise from Japan produced and/or exported by JTEKT, NSK, and NTN in determining the margins at which the dumping of the subject merchandise would likely continue or recur if the antidumping duty order were revoked. The subject merchandise consists of finished ball bearings and parts of ball bearings. Finished ball bearings are completely manufactured ball bearings and parts of ball bearings are parts that are used in assembling completely manufactured ball bearings.

JTEKT

JTEKT provided the quantities of imports of finished ball bearings and parts of ball bearings in the calendar years 1987, 2000, 2001, 2002, 2003, and 2004. See Koyo Seiko's September 15, 2005, substantive response at pages 13-14 for the business-proprietary statistics. The CAFC converted JTEKT's business-proprietary import statistics into a public version on a percentage basis using the pre-order statistics as a baseline as follows:

| JTEKT | Finished Ball Bearing Units | Ball Bearing Part Units | Total Ball Bearing Units |
|-------|-----------------------------|-------------------------|--------------------------|
| 1987 | 100% | 100% | 100% |
| 2000 | 65% | 21% | 30% |
| 2001 | 70% | 10% | 22% |
| 2002 | 74% | 2% | 16% |
| 2003 | 57% | 2% | 12% |
| 2004 | 63% | 2% | 14% |

See *NMB Singapore Ltd. II*, 557 F.3d at 1321, 1327.

Because JTEKT continued to dump finished ball bearings and parts of ball bearings at margins above *de minimis* (see, e.g., *Final Results*) and because the above data illustrate that imports of finished ball bearings and parts of ball bearings that JTEKT produced and/or exported declined significantly compared to the 1987 level of quantity of imports of finished ball bearings and parts of ball bearings, we find that the antidumping duty order has imposed a discipline on JTEKT's exports of finished ball bearings and parts of ball bearings. Therefore, we find that the antidumping duty margin from the less-than-fair-value investigation reflects JTEKT's likely behavior without the discipline of the antidumping duty order in place.

NSK and NTN

NSK provided the quantities of imports of finished ball bearings in the calendar years 1987, 2000, 2001, 2002, 2003, and 2004. See NSK's September 15, 2005, substantive response at page 12 for the business-proprietary statistics. The CAFC converted NSK's business-

proprietary import statistics into a public version on a percentage basis using the pre-order statistics as a baseline as follows:

| NSK | Finished Ball Bearing Units |
|------|-----------------------------|
| 1987 | 100% |
| 2000 | 124% |
| 2001 | 67% |
| 2002 | 69% |
| 2003 | 60% |
| 2004 | 76% |

See *NMB Singapore Ltd. II*, 557 F.3d at 1321, 1327.

Because NSK continued to dump the finished ball bearings at margins above *de minimis* (see, e.g., *Final Results*) and because, with the exception of 2000, the above data illustrate that imports of the finished ball bearings that NSK produced and/or exported declined significantly compared to the 1987 level of quantity of imports, we find that the antidumping duty order has imposed a discipline on NSK's exports of finished ball bearings. NSK reported that it does not have full knowledge of its shipments of parts of ball bearings to the United States before the issuance of the antidumping duty order. See NSK's September 15, 2005, substantive response at page 12. As such, we do not have record evidence on which to make a finding regarding the quantities of NSK's exports of parts of ball bearings before and after the issuance of the antidumping duty order.

NTN reported the quantities of imports of finished ball bearings and parts of ball bearings separately for fiscal years 2000 through 2004 but it reported an estimated quantity of imports of subject merchandise in fiscal year 1988 without segregating between finished ball bearings and parts of ball bearings. See NTN's September 15, 2005, substantive response at Exhibits 3 and 4. NTN continued to dump the subject merchandise at margins above *de minimis* (see, e.g., *Final Results*) but, because NTN did not provide the Department with evidence of its pre-order

quantity for imports of finished ball bearings and parts of ball bearings, the Department does not have record evidence on which to make a finding regarding the quantities of NTN's exports of finished ball bearings and parts of ball bearings before and after the issuance of the antidumping duty order.

Normally, if the Department finds that dumping would likely continue or recur if the antidumping duty order is revoked, the Department will find that dumping would continue or recur at the company-specific margin from the less-than-fair-value investigation for each company. See *Eveready Battery Company, Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999). 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 antidumping duty order in place. See *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, et al.; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006), and the accompanying Issues and Decision Memorandum at pages 20-21.

A respondent seeking the Department's determination in a sunset review that dumping would likely continue or recur at a lower margin than the margin which the Department found in the less-than-fair-value investigation has the burden to produce and present information to support its claim. The burden of evidentiary production belongs to "the party in possession of the necessary information." See, e.g., *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1583 (CAFC 1993). Even when the Department does not request specific information from a respondent that would enable the Department to make a determination in the respondent's favor, the respondent has the burden to present the information in the first instance with its request for a decision in its favor. See *NTN Bearing Corp. of Am. v. United States*, 997 F.2d 1453, 1458 (CAFC 1993). Further, in

its opinion, the CAFC held that the Department's analysis in a sunset review is dependent on the information submitted by parties. See *NMB Singapore Ltd. II*, 557 F.3d at 1331.

In order to compare the company-specific pre-order quantity of imports of subject merchandise in a sunset review, the Department normally relies on the information interested parties submit in their substantive responses pursuant to 19 CFR 351.218(d)(3)(i). See, e.g., *Brass Sheet and Strip from Germany; Preliminary Results of the Sunset Review of Antidumping Duty Order*, 70 FR 62093 (October 28, 2005), unchanged in *Brass Sheet and Strip from Germany: Final Results of the Full Sunset Review of the Antidumping Duty Order*, 71 FR 4348 (January 26, 2006) (collectively *Brass Sheet and Strip*). Because NSK and NTN did not submit information necessary for us to determine whether dumping would likely continue or recur at the lower *AFBs 15* margins rather than the less-than-fair-value margins determined in the investigation if the antidumping duty order were revoked with respect to these two companies, we have no evidence to find that dumping would continue or recur at the margins we found for these two companies in *AFBs 15*.

Because NSK and NTN continued to dump finished ball bearings and parts of ball bearings at margins above *de minimis* and because neither NSK nor NTN provided evidence necessary to determine whether their levels of imports held steady or increased, we find that the antidumping duty order has imposed a discipline on NSK's exports of finished ball bearings, as stated earlier, and parts of ball bearings and NTN's exports of finished ball bearings and parts of ball bearings. Therefore, we find that the antidumping duty margins from the less-than-fair-value investigation reflect NSK's and NTN's likely behavior without the discipline of the antidumping duty order in place.

Values

In this remand redetermination, we did not take into consideration the reported values of subject merchandise to determine that dumping would likely continue or recur at the margins we found for JTEKT, NSK, and NTN in the less-than-fair value investigation if the antidumping duty order is revoked. It is the Department's normal practice to consider quantities, not values, of subject merchandise in determining margins to report for a sunset review. See, e.g., *Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines; Final Results of the Expedited Five-year ("Sunset") Reviews of Antidumping Duty Orders*, 71 FR 26748 (May 8, 2006), *Silicon Metal from the People's Republic of China and Brazil: Final Results of the Expedited Reviews of the Antidumping Duty Orders*, 71 FR 26334 (May 4, 2006), and *Brass Sheet and Strip*. In addition, the values reported for this second sunset review may not be reliable indicators due to the price inflation during the 17-year period between the years before the issuance of the antidumping duty order and the time of the second sunset review.

Information on U.S. Market Share

Pursuant to the CAFC order, we analyzed whether we are able to determine the U.S. market share of JTEKT, NSK, and NTN. We find that we are unable to determine the U.S. market share of JTEKT, NSK, and NTN based on the information on the record. The document entitled "BBs – Apparent Consumption and Imports from Japan as a Share Thereof," which the CAFC cited in *NMB Singapore Ltd. II*, 557 F.3d at 1331, as a document on the record of the second sunset review that appears to be useful to "estimate each Japanese company's share of the U.S. market by combining these data with each company's percentage share of Japanese exports to the United States," contains, as the CAFC indicated, the dollar values of total imports of subject merchandise from Japan for 1987 through 1990 and 2000 through 2004. Because this

document does not contain information on quantities of finished ball bearings and parts of ball bearings separately, we find that we cannot rely on this information for purposes of analyzing the U.S. market share of each of these Japanese respondents.

For the subject merchandise, we find that we cannot determine from record evidence the changes to the U.S. market share for each of these companies because the subject merchandise consists of finished ball bearings and parts of ball bearings. Because record evidence does not disclose the changes to the U.S. market shares of finished ball bearings and parts of ball bearings separately, we cannot determine the changes to the U.S. market shares of the subject merchandise for JTEKT, NSK, and NTN. For example, a decrease in the quantity of imports of finished ball bearings and an increase in the quantity of imports of parts of ball bearings for purposes of further manufacturing into finished ball bearings in the United States may increase the total number of the quantity of the imports of the subject merchandise. This does not indicate, however, an increase in the reported quantities of the subject merchandise imported into the United States from the pre-order level on an apples-to-apples comparison basis. In other words, an increase in quantities, which includes parts of ball bearings, may not represent an actual increase in the quantities of the finished ball bearings sold in the United States. Without additional information, we cannot determine the U.S. market shares for these companies. Therefore, we also did not take into consideration the U.S. market shares of JTEKT, NSK, and NTN.

COMMENTS

We released our draft remand to interested parties on June 19, 2009. On June 26, 2009, we received comments from JTEKT, NSK, and Timken.

Comment 1: The Timken Company (Timken), the petitioner, requests that the Department determine that using value to measure changes in the U.S. market share would be reliable because record evidence demonstrates that the U.S. market shares of JTEKT, NSK, and NTN have changed during the period of review compared to each company's share in the U.S. market prior to the 1989 less-than-fair-value investigation. Citing the document entitled "BBs – Apparent Consumption and Imports from Japan as a Share Thereof," which the CAFC cited in *NMB Singapore Ltd. II*, 557 F.3d at 1331, Timken argues that these changes provide additional support for the Department's determination to use the margins established for these companies in the 1989 less-than-fair-value investigation as the magnitude of the margin likely to prevail if the antidumping duty order were revoked. Timken explains that "{c}hanges in the value of the U.S. market or U.S. apparent consumption presumably would reflect the effects of price inflation as well as actual changes in the level of demand" and that "{t}his should negate any concerns about the effects of price inflation on the value of an importer's shares of the U.S. market at different points in time."

JTEKT, NSK, and NTN did not comment on this issue.

Department's Position: For the subject merchandise, we find that we cannot determine from record evidence the changes in sales value to the U.S. market share for each of these companies because the subject merchandise consists of finished ball bearings and parts of ball bearings. Because record evidence does not disclose the changes in sales value to the U.S. market shares of finished ball bearings and parts of ball bearings separately, we cannot determine the changes in sales value to the U.S. market shares of the subject merchandise for JTEKT, NSK, and NTN. As explained above, a decrease in the sales value of imports of finished ball bearings and an increase in the sales value of imports of parts of ball bearings for purposes of further

manufacturing into finished ball bearings in the United States may increase the total sales value of the imports of the subject merchandise. This does not indicate, however, an increase in the reported sales value of the subject merchandise imported into the United States from the pre-order level on an apples-to-apples comparison basis. In other words, an increase in sales value, which includes parts of ball bearings, may not represent an actual increase in sales value of the finished ball bearings sold in the United States. Without additional information, we cannot determine the U.S. market shares for these companies. Therefore, we also did not take into consideration the U.S. market shares of JTEKT, NSK, and NTN.

Comment 2: Citing *NMB Singapore Ltd. II*, 557 F.3d at 1331, which states that, “if it is the case that the U.S. market share of the Japanese companies could be determined from the data before Commerce, then Commerce’s determination went against the practice it had established as of the time of the decision under review,”² Timken requests that the Department use this remand redetermination to confirm that the use of an importer’s U.S. market share is the Department’s practice in determining whether that importer’s import volumes have remained steady or increased.

Timken also requests that the Department clarify (1) its practice in sunset reviews regarding the data on which it will rely in examining whether an importer’s U.S. market share has remained steady or increased in order to select a more recent margin and (2) that such data must be based on apparent consumption of the subject merchandise.

² In a footnote, Timken states that the Department cited the *Final Results in Oil Country Tubular Goods from Mexico; Preliminary Results of the Sunset Review of Antidumping Duty Order*, 71 FR 77372 (December 26, 2006) (*Oil Country Tubular Goods*), and the accompanying Issues and Decision Memorandum at page 16 as an authority for using relative export data as a proxy for U.S. market share. Citing *NMB Singapore Ltd. II*, 557 F.3d at 1330, Timken explains that *Oil Country Tubular Goods* is a sunset-review decision which was published after the *Final Results* but has been relied upon as an authority by the Department and other parties for the use of relative export data as a proxy for U.S. market share. Timken asserts that the Department cannot use a decision that the CAFC found as an unexplained departure from an agency practice as authority in a subsequent sunset review.

NSK requests that the Department clarify that taking pre-order quantities or U.S. market share in determining the magnitude of the margin is the Department's practice at its discretion, not a requirement under section 752(c)(3) of the Tariff Act of 1930, as amended (the Act), or the legislative history. NSK argues that section 752(c)(3) of the Act requires that the Department provide to the International Trade Commission (ITC) "the magnitude of the margin of dumping that is likely to prevail if the order is revoked" but it does not dictate how the Department should derive this margin. Because section 752(c)(3) of the Act is different from section 752(c)(1) of the Act, which requires the Department to consider "the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order," NSK explains, the Department's use of the level of imports of the subject merchandise or market share as part of its determination on the magnitude of the margin is a matter that rests entirely within the Department's discretion.

Even in situations in which the Department bases its determination on the magnitude of the margin on the level of the imports of the subject merchandise, NSK claims, the statute does not require the Department to compare pre- and post-order levels of import volumes of the subject merchandise. According to NSK, section 752(c)(1)(B) of the Act requires the Department to consider "the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order" in making a revocation decision but the statute does not provide the same statutory requirement in determining the magnitude of the margin. NSK states that the statute does not instruct the Department on how to calculate market share for purposes of sunset reviews.

NSK asserts that the legislative history separates section 752(c)(1) of the Act and section 752(c)(3) of the Act. NSK comments that, while the legislative history for section 752(c)(1) of

the Act discusses how this section relates to sections 752(c)(2) and (4) of the Act, it makes no mention of correlation with section 753(c)(3) of the Act. Further, according to NSK, the legislative history for section 752(c)(3) of the Act does not make any mention of correlation with section 752(c)(1) of the Act.

NSK explains that, while the legislative history for section 752(c)(1) of the Act recounts how the Department will compare the import quantities of the subject merchandise before and after the issuance of the antidumping duty order and provides three examples for how certain import trends may lead to certain conclusions, the legislative history for section 752(c)(3) of the Act does not refer to pre- versus post-order comparisons in any context and provides just one example for how certain import trends may lead to certain conclusions.

With respect to market share, NSK states, while the legislative history for section 752(c)(1) of the Act suggests that the combination of “declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked,” the legislative history for section 753(c)(3) of the Act does not mention market share at all.

JTEKT and NTN did not comment on this issue.

Department’s Position: As we stated in the *Information on U.S. Market Share* section above, we do not have sufficient information to analyze the U.S. market shares of JTEKT, NSK, and NTN for purposes of determining the magnitude of the margins likely to prevail if the antidumping duty order is revoked. Therefore, it is not necessary to make further statements with respect to U.S. market share in addition to our explanation in the *Information on U.S. Market Share* section above.

Comment 3: NSK argues that the Department did not make a determination as to whether NSK would resume dumping at the lower *AFBs 15* margin because NSK did not submit import quantity data on parts of ball bearings. NSK contends that the Department does not need to consider the quantity of NSK's parts of ball bearings because the Department calculated the NSK margins in the 1989 less-than-fair-value investigation and in *AFBs 15* based on NSK's shipments of finished ball bearings only. According to NSK, the Department did not examine further-manufactured products in the 1989 less-than-fair-value investigation and the Department used the special rule in section 772(e) of the Act to calculate NSK's margin in *AFBs 15*. NSK claims that it provided the Department sufficient evidence with respect to finished ball bearings for the Department to determine whether NSK's level of imports held steady or increased such that the absence of the pre-order quantity of NSK's parts of ball bearings does not prevent the use of the *AFBs 15* margin. NSK requests that the Department find that NSK provided sufficient evidence for the Department to determine whether NSK's level of imports were held steady or increased because NSK provided the data about shipments of finished ball bearings for calendar years 1987, 2000, 2001, 2002, 2003, and 2004.

JTEKT, NTN, and Timken did not comment on this issue.

Department's Position: Although we found that NSK had not provided data on its import quantities of parts of ball bearings, we used NSK's statistics on finished ball bearings to determine that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margin we determined for NSK in the 1989 less-than-fair-value investigation. NSK argues that we did not reach a determination as to whether NSK was likely to resume dumping at the lower margin determined in *AFBs 15*, yet we did make a determination on this issue based upon NSK's data on import quantities of finished ball bearings. It is not

necessary to use NSK's statistics on parts of ball bearings because we did not take into consideration parts of ball bearings in the calculation of NSK's margin in the 1989 less-than-fair-value investigation. 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, 19103 (May 3, 1989). The decrease in quantity of NSK's finished ball bearings since the issuance of the order indicates that the use of the margin from the 1989 less-than-fair-value investigation is appropriate. The absence from the record of the pre-order quantity of NSK's parts of ball bearings is not relevant in our decision to use the margin from the 1989 less-than-fair-value investigation.

Comment 4: JTEKT and NSK state that the statutory purpose of the Department's final results of redetermination is to provide the ITC the magnitude of the margin of dumping that is likely to prevail if the antidumping duty order is revoked, which the ITC may then consider as part of its parallel review of whether revocation of the antidumping duty order would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time. JTEKT and NSK argue that the Department should use the total value of shipments because the ITC uses total value in sunset reviews involving the orders on ball bearings and parts thereof. JTEKT and NSK suggest that not doing so may result in the ITC discounting the Department's determination on the magnitude of the margin.

JTEKT and NSK claim that the Department's normal practice of basing its determination of the magnitude of the margin on the import-quantity data is inconsistent with the ITC's general reliance on value in assessing volume factors such as apparent consumption, shipments, and imports because of the inherent risks in relying on quantity data due to product-mix issues. JTEKT and NSK request that, even though the Department's normal practice is to consider

quantities of subject merchandise for its determination on the magnitude of the margin, the Department follow the principle of comity, given the ITC's stated preference for value in sunset reviews involving the antidumping duty orders on ball bearings and parts thereof, and use value for the final results of redetermination.

JTEKT and NSK claim that the value statistics of their subject merchandise indicate that the antidumping duty order did not impose a discipline on their shipments of ball bearings because their level of imports held steady or increased during the period of review. They also assert that, because their levels of imports of subject merchandise held steady or increased in value during the period of review compared to the pre-order level of imports of subject merchandise in value, their *AFBs 15* margins (or the zero-percent margin without zeroing) best reflect their behavior without the imposition of the order.

NTN and Timken did not comment on this issue.

Department's Position: For the reasons we stated in the *Value* section above, we did not use values in this remand redetermination. In addition, record evidence does not contain sufficient data for us to rely on values in determining the magnitude of the margin.

Comment 5: JTEKT and NSK claim that the use of zeroing to calculate antidumping duties in investigations and administrative reviews has been repeatedly and conclusively dismissed as a violation of the WTO obligations of the United States.³ Therefore, according to JTEKT and NSK, in determining the magnitude of the margin likely to prevail if the order is

³ JTEKT and NSK cite *United States – Laws, Regulations and Methodology for Calculating Dumping Margins*, WT/DS294/R (October 31, 2005), in which the United States announced that it would “abandon the use of average-to-average comparisons without . . . offsets {for dumping in original investigations},” *United States – Measures Relating to Zeroing and Sunset Reviews* (WT/DS322), in which the WTO Appellate Body ruled that the United States maintained in violation of Articles 2.4 and 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 the zeroing procedures in administrative reviews under any comparison method, and *United States – Laws, Regulations and Methodology for Calculating Dumping Margins (“Zeroing”)*, WT/DS294/RW, para. 8.218 (December 17, 2008), in which an Article 21.5 Panel held that any final decision in administrative reviews after the end of the agreed reasonable period of time must be based on a methodology consistent with the recommendations and ruling of the WTO.

revoked, the Department should account fully for offsets arising from non-dumped transactions, which would conform with the legislative intent “to bring U.S. law fully into compliance with U.S. obligations under . . . {the Uruguay Round} agreements” as stated in Statement of Administrative Action, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess., at 669, and with the *Charming Betsy* doctrine in *Alexander Murray, Esq. v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804), which requires that “an act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains.” Therefore, JTEKT and NSK argue, the Department should take all steps to ensure that its final results of remand redetermination comply with recent WTO rulings and avoid the use of margins calculated with zeroing.

According to JTEKT and NSK, the record evidence demonstrates that their margins for the last five administrative reviews would have been zero and less than zero, respectively, if the Department had calculated these margins without zeroing. JTEKT and NSK assert that a predictive analysis of the most recent data demonstrates that dumping would not likely continue or recur if the antidumping duty order is revoked. Therefore, given that any margin likely to prevail in the future if the antidumping duty order is revoked will exclude offsets for dumping, according to JTEKT and NSK, the Department’s final results of remand redetermination should conclude that the magnitude of the margin likely to prevail for JTEKT and NSK if the antidumping duty order is revoked is zero percent.

NTN and Timken did not comment on this issue.

Department’s Position: The CIT affirmed our decision with respect to the zeroing issue in the *Final Results* and it was not an issue before the CAFC. See *NMB Singapore Ltd. I*, 533 F. Supp. 2d at 1250-53, and *NMB Singapore Ltd. II*. Therefore, this is not an issue for purposes of this remand redetermination.

Comment 6: If the Department decides not to determine that the magnitude of the margin likely to prevail is zero percent, JTEKT and NSK argue, the Department should nonetheless reject the margin which the Department determined in the 1989 less-than-fair-value investigation because the Department based these margins from the investigation on outdated statutes and calculation methodologies that are no longer in effect.

According to JTEKT and NSK, the current statute instructs the Department (1) not to increase export price and constructed export price by rebates or uncollected consumption taxes and (2) decrease constructed export price by profit allocable to all selling, distribution, and further-manufacturing activities. JTEKT and NSK also point out that there have been significant changes to the calculation of normal value and constructed value. Citing, as examples, *NSK Ltd. v. United States*, 115 F.3d 965, 973-75 (CAFC 1997), and *NSK Ltd. v. United States*, 390 F.3d 1352, 1356-58 (CAFC 2004), JTEKT and NSK explain that, since the Department completed the final determination of the 1989 less-than-fair-value investigation, the courts have ordered the Department to exclude U.S. sample sales from the U.S. sales database and treat U.S. repacking expenses as movement expenses, respectively. Therefore, JTEKT and NSK claim, the margins from the 1989 less-than-fair-value investigation would likely not prevail if the antidumping duty order is revoked because these margins are based on statutory provisions and interpretations by the Department that are no longer valid.

JTEKT and NSK state that section 777A(d)(1) of the Act instructs the Department to calculate less-than-fair-value sales in an investigation by comparing either the weighted average of the normal values to the weighted average of the export prices and constructed export prices for comparable merchandise or by comparing the normal values of individual sales transactions to the export prices or constructed export prices of individual sales transactions for comparable

merchandise. In accordance with section 777A(d)(1)(B) of the Act, JTEKT and NSK explain, the Department may calculate margins based on a comparison of the weighted average of the normal values to the export prices or constructed export prices of individual sales transactions for comparable merchandise but only if “(i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or period of time, and (ii) the administering authority explains why such differences cannot be taken into account using a[n above] method” In the 1989 less-than-fair-value investigation, according to JTEKT and NSK, the Department calculated margins using a calculation methodology comparable to the methodology described in section 777A(d)(1)(B) of the Act. As a result, JTEKT and NSK claim, the margins from the 1989 less-than-fair-value investigation would not likely prevail if the antidumping duty order is revoked because they are based on a comparison methodology which the Department has abandoned.

JTEKT and NSK explain that the Department analyzed only identical merchandise for many companies in the 1989 less-than-fair-value investigation, in which the companies had sufficient identical matches to account for at least 33 percent of U.S. sales in the period of investigation. JTEKT and NSK also point out that the Department has changed the model-match methodology twice during this proceeding. JTEKT and NSK contend that it is thus likely that the Department would use a model-match methodology other than the methodology it used during the 1989 less-than-fair-value investigation to calculate the margins that would likely prevail if the antidumping duty order is revoked. Therefore, JTEKT and NSK claim, the margins from the 1989 less-than-fair-value investigation would likely not prevail if the antidumping duty order is revoked because they are based on a model-match methodology twice removed from the investigation.

Department's Position: For this remand redetermination we did not consider changes to the statute and calculation methodologies in our determination on the magnitude of the margins likely to prevail if the antidumping duty order is revoked with respect to JTEKT and NSK. Changes to the statutory provisions and calculation methodologies since our determination of margins for JTEKT and NTN in the 1989 less-than-fair-value investigation is not a basis to reject these margins from the investigation because such changes to the statutory provisions and calculation methodologies 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).

Comment 7: JTEKT argues that the margin which the Department found for Koyo Seiko in the 1989 less-than-fair-value investigation is not an appropriate measure of the margin likely to prevail because the Department calculated this margin based in part on best information available due to Koyo Seiko's numerous errors and confusion concerning the data the Department requested during the 1989 less-than-fair-value investigation. JTEKT states that, in the 1989 less-than-fair-value investigation, the Department found that Koyo Seiko had acted to the best of its ability but the Department based the margin in part on the best information available because Koyo Seiko submitted unsubstantiated data. JTEKT explains that Koyo Seiko's margin in the 1989 less-than-fair-value investigation was the estimated preliminary margin which the Department found for Koyo Seiko based on Koyo Seiko's severely flawed and inaccurate home-market sales database. According to JTEKT, the Department chose this margin because it was higher than the margin in the petition. JTEKT claims that Koyo Seiko attempted to submit a corrected home-market sales database after the preliminary determination in

November 1988 but the Department rejected Koyo Seiko's request for submission of the revised home-market sales database on the ground that it would be an untimely submission.

Regardless of whether it may be appropriate in some cases for the Department to consider a margin calculated using best information available or adverse facts available as the margin likely to prevail if an antidumping duty order is revoked, JTEKT argues, Koyo Seiko's margin in the 1989 less-than-fair-value investigation was not an accurate measure of Koyo Seiko's degree of dumping and not an accurate reflection of any uncooperativeness Koyo Seiko exhibited in the 1989 less-than-fair-value investigation. JTEKT asserts that the margin for Koyo Seiko in the 1989 less-than-fair-value investigation reflected confusion that surrounded Koyo Seiko's questionnaire responses despite the fact that Koyo Seiko had acted to the best of its ability in the investigation. JTEKT claims that, because Koyo Seiko and later JTEKT have provided clear and consistent responses to the Department's questionnaires and, as a result, the Department has calculated lower margins in subsequent administrative reviews than the margin for Koyo Seiko in the 1989 less-than-fair-value investigation, it is inappropriate and contrary to record evidence for the Department to rely on the investigation rate in determining the magnitude of the margin likely to prevail if the antidumping duty order is revoked.

JTEKT requests that the Department refer to a more recently calculated margin which would reflect JTEKT's improved ability to respond to the Department's questionnaires and provide a more accurate measure of JTEKT's sales activity than the margin in the 1989 less-than-fair-value investigation because a more recently calculated margin better reflects the margin likely to prevail in the future if the antidumping duty order is revoked.

Department's Position: We determine that the magnitude of the margin likely to prevail for JTEKT if the antidumping duty order is revoked is the margin which we determined for Koyo

Seiko based in part on best information available in the 1989 less-than-fair-value investigation. The statute in effect at the time of the 1989 less-than-fair-value investigation required that the Department use the best information available where parties failed to cooperate and the CAFC has found that margins based upon best information available “serve ‘the basic purpose of the statute – determining current margins as accurately as possible.’” See *D & L Supply Co. v. United States*, 113 F.3d 1220, 1223 (CAFC 1997), citing *Rhone Poulenc, Inc., v. United States*, 899 F.2d 1185, 1191 (CAFC 1990). Accordingly, the margin for Koyo Seiko based upon best information available reflects an accurate margin of Koyo Seiko’s dumping at the time of the 1989 less-than-fair-value investigation. Further, this margin was not overturned on appeal and such a margin “is presumed to be accurate.” *Id.* at 1224. Therefore, the margin based in part on best information available or facts available is not invalid *per se*. Also, as discussed in the *Analysis* section above, JTEKT did not demonstrate that revocation of the antidumping duty order would not likely lead to continuation or recurrence of dumping at the margin which we determined for Koyo Seiko in the 1989 less-than-fair-value investigation.

CONCLUSION

Consistent with the CAFC’s remand order, the Department has redetermined that revocation of the antidumping duty order on ball bearings and parts thereof Japan for JTEKT, NSK, and NTN would likely lead to the continuation or recurrence of dumping at margins that it determined in the less-than-fair-value investigation as follows:

| <u>Manufacturers/Exporters/Producers</u> | <u>Weighted-Average Margin (Percent)</u> |
|--|--|
| JTEKT | 73.55 |
| NSK | 42.99 |
| NTN | 21.36 |

FINAL RESULTS OF REDETERMINATION

If the Court affirms these remand results, we will report to the ITC our redetermination that revocation of the antidumping duty order on ball bearings and parts thereof from Japan for JTEKT, NSK, and NTN would likely lead to the continuation or recurrence of dumping at margins that it determined in the less-than-fair-value investigation as listed above.

We are issuing these final results of redetermination pursuant to the remand order of the CIT in *NMB Singapore Ltd. v. United States*, Consol. Court No. 06-00182 (April 20, 2009).

/s/ Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

July 20, 2009

(Date)