

June 10, 2010

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

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

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

### Summary

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

1. Successorship
2. Briefing Schedule
3. Filing of Factual Submissions

### Background

On November 20, 2009, the Department of Commerce (the Department) published the preliminary results of the changed-circumstances review of the antidumping duty order on ball bearings and parts thereof from France concerning SNR Roulements S.A. See *Ball Bearings and Parts Thereof From France: Preliminary Results of Changed-Circumstances Review*, 74 FR 60242 (November 20, 2009) (*Preliminary Results*). In the *Preliminary Results*, we determined that, after acquisition by NTN Corporation, SNR Roulements S.A. is the successor-in-interest to pre-acquisition SNR Roulements S.A. and should therefore be assigned the same antidumping-duty treatment as pre-acquisition SNR Roulements S.A. We invited parties to comment on the preliminary results. We received case briefs and rebuttal briefs from The Timken Company and SNR Roulements S.A./NTN Corporation. We did not hold a hearing as one was not requested.

## The Department's Successorship Determination

On September 18, 2009, pursuant to a request from SNR Roulements S.A. (SNR), we initiated a changed-circumstances review in order to determine whether post-acquisition SNR was a successor-in-interest to pre-acquisition SNR following SNR's acquisition by NTN Corporation (NTN). See *Ball Bearings and Parts Thereof From France: Initiation of Antidumping Duty Changed-Circumstances Review*, 74 FR 47920 (September 18, 2009). On September 22, 2009, we sent a questionnaire to SNR requesting additional information. SNR submitted its response on October 23, 2009.

On November 20, 2009, we preliminarily found that post-acquisition SNR is the successor in interest to pre-acquisition SNR. See *Preliminary Results*.

We based this determination on SNR's August 21, 2009, request to initiate a changed-circumstances review and its October 23, 2009, response to our questionnaire in which SNR provided evidence supporting its claim to be the successor-in-interest to pre-acquisition SNR. Specifically, SNR demonstrated that there were no changes in corporate structure or product mix and only minor changes in management, production facilities, supplier base, or customer base. Moreover, NTN stated that it does not plan to make any significant changes to the pre-acquisition SNR production facilities, management personnel, sources of supply, and customer bases. NTN stated further that it intends to maintain, market, and promote the NTN and SNR brands separately in all markets and for all applications.

For these reasons, we preliminarily found that post-acquisition SNR presented evidence to establish a *prima facie* case that it should be treated as the successor-in-interest to pre-acquisition SNR and that the record indicated that the acquisition of SNR by NTN had not changed the operations of the company in a meaningful way. In other words, the record evidence demonstrated to the Department that SNR's management, production facilities, supplier relationships, and customer base were substantially unchanged from their status or circumstances prior to the acquisition. In addition, the record evidence demonstrated to the Department that post-acquisition SNR operates essentially in the same manner as pre-acquisition SNR. Consequently, we preliminarily determined that post-acquisition SNR should be assigned the same antidumping-duty treatment as pre-acquisition SNR.

## Discussion of Issues

### **Successorship**

Comment 1: Timken argues that changes to SNR preclude the application of pre-acquisition SNR's cash-deposit rate to post-acquisition SNR and that the all-others rate should apply to post-acquisition SNR until new margins can be determined.

In support of its argument, Timken contends first that, based on the Department's practice, post-acquisition SNR should be assigned the all-others antidumping duty rate, rather than pre-acquisition SNR's cash-deposit rate, until the Department establishes a new rate for SNR. Timken cites *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber From Japan*, 69 FR 61796 (October 21, 2004), unchanged in final results, 69 FR 67890 (November 22, 2004) (*Polychloroprene Rubber*), *Brass Sheet and Strip From Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460

(May 13, 1992) (*Brass Sheet*), *Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber From the Republic of Korea*, 66 FR 1642 (January 9, 2001), unchanged in final results, 66 FR 30411 (June 6, 2001) (*PSF*), and *Certain Softwood Lumber Products From Canada: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review*, 68 FR 44048 (July 25, 2003), unchanged in final results, 68 FR 54891 (September 19, 2003) (*Lumber*).

Based on these examples of the Department's practice in changed-circumstances reviews and the facts of this proceeding, Timken contends, the Department must find that post-acquisition SNR is not the successor-in-interest to pre-acquisition SNR and that post-acquisition SNR is not entitled to pre-acquisition SNR's cash-deposit rate.

Specifically, concerning the facts of this proceeding, Timken argues that there has been a substantial change to SNR's ownership, general structure, and goals. Citing SNR's request for a changed-circumstances review, Timken contends that NTN raised its ownership in SNR from 35 percent to 51 percent. Citing an industry newsletter, *eBearing News*, which Timken placed on the record as Exhibit 1 of its factual submission dated February 5, 2010, Timken asserts that NTN's acquisition agreement with SNR allows NTN to own up to 80 percent of SNR in 2010. Timken alleges further that NTN is fully absorbing and integrating all U.S. aftermarket and industrial operations of SNR. Citing an NTN press release, which Timken placed on the record as Exhibit 8 of its factual submission dated December 16, 2009, Timken asserts that NTN and SNR have integrated significantly, such that they present "a single customer contact for the two brands in Europe, ... a single management structure, ... a single R&D centre in Europe, ... purchasing from common sources, ... and standardization of the IT systems and logistics to move to a common European structure." Finally, citing the Financial Results for the First Half of Fiscal Year 2008 which NTN provides to investors, Timken contends that NTN characterized its progress in its integration with SNR as "Enhance the integration of sales activities => 'One face to the customer' (completed), standardization of price list (completed), integration of shipping storage (from Dec. '08), integration of systems (from Apr. '09)."

Timken also argues that there have been significant changes to SNR's production and its production facilities, including capacity and product development. Citing *eBearing News*, Timken asserts that there has been or will be additional investment, expansion of floor space, added machinery, and new jobs at SNR's plant in Argonay which is dedicated to the production of bearings for aircraft and aerospace applications. According to Timken, this investment is consistent with information from NTN that post-acquisition SNR intends to move away from SNR's dependence on Europe's auto industry and is expanding bearing sales to high-value and emerging industries, including rail bearings, machine tool bearings, electronics and, in particular, bearings for wind-energy turbine applications. Citing the Financial Results for the First Half of Fiscal 2009, Timken contends that NTN has reported to its investors that it intends to have SNR and NTN sell each other's product to further "effective utilization of production capacity" which, according to Timken, indicates that the post-acquisition product mix will likely be different to avoid production overlap with NTN. Finally, citing NTN's Financial Results for the First Half of Fiscal Year 2008, Timken asserts that NTN and post-acquisition SNR now also engage in combined product development. Timken argues that, according to *eBearing News*, this product development includes a new hub-unit sensor.

Timken argues further that SNR's claim that there was no change in its supplier relationships before and after acquisition is contrary to other evidence on the record. Citing

NTN's Financial Results for the First Half of Fiscal Year 2009, Timken contends that NTN reported that it will promote "joint procurement for parts and materials."

Finally, Timken argues that there have been significant changes in SNR's customer base and marketing following the acquisition by NTN. According to Timken, SNR has conceded that NTN Bearing Corporation of America (NBCA) and SNR Bearings USA have significant customer overlap and that many of SNR's bearings will now be imported into the United States by NBCA. Citing a press release by NTN, Timken contends that SNR's U.S. aftermarket and industrial operations will integrate into the NBCA organization as of April 1, 2009, and that customers will be offered a single point of access to buy SNR or NTN products. As a result of this integration, Timken asserts, SNR will retain only its current automotive original equipment manufacturer and aerospace businesses. Citing *eBearing News*, Timken contends that NTN reportedly plans to close SNR's warehouse and consolidate everything into NTN's Norcross, Georgia, warehouse. In addition, citing the price list it submitted for the record, Timken alleges that SNR and NTN now also make available combined price lists, at least for the European market.

Timken concludes that, because many SNR bearings will now be sold in the United States by a different organization than that which made the U.S. sales for pre-acquisition SNR, dumping margins determined for SNR in preceding administrative reviews cannot reasonably be assumed to remain accurate. Accordingly, Timken argues, the Department should apply the all-others rate to entries of subject merchandise from post-acquisition SNR.

NTN and SNR (collectively, NTN/SNR) distinguish the Department's four changed-circumstances determinations cited by Timken from the present proceeding. Specifically, NTN/SNR indicates that, unlike the parties in those cases, SNR's board and management have undergone few changes following acquisition and that SNR's sales have not been excluded from the order or exempted from reporting. Therefore, NTN/SNR asserts, Timken has not provided precedent supporting its argument that the Department should depart from its findings in the *Preliminary Results*.

NTN/SNR argues that Timken places heavy reliance on its submissions of factual information, much of which consist of articles from *eBearing News*. NTN/SNR claims that the Department should disregard information from *eBearing News* entirely because it is inherently unreliable, it is unaffiliated with either NTN or SNR, and it is simply a compendium of publicly available information to which the individual running the site adds commentary. According to NTN/SNR, articles in *eBearing News* are not sourced and, frequently, not accurate. To support its claim, NTN/SNR observes that, in one of the articles cited by Timken, *eBearing News* confuses NBCA and NTN-BCA, which are two different companies.

NTN/SNR avers that nothing in the press release to which Timken refers contradicts SNR's argument that the operations of post-acquisition SNR are not materially dissimilar to the operations of pre-acquisition SNR. According to NTN/SNR, NTN and SNR are separate companies in Europe that have separate customers and SNR has not materially changed its production in Europe. NTN/SNR also contends that SNR has no plans to change the product mix or the production facilities at its existing plants aside from its Argonay, France, plant. According to NTN/SNR, the Department was aware of the changes to its Argonay plant when the agency made its preliminary decision in this proceeding. NTN/SNR also disputes Timken's assertion that the product mix at the Argonay plant will change.

NTN/SNR contends that, in some instances, some of the factual information Timken submitted is the same information that NTN has submitted. According to NTN/SNR, this information consists of a brochure that demonstrates that NTN will continue the SNR brand of bearings as a separate brand.

NTN/SNR agrees with Timken that the Department evaluates the totality of circumstances and does not rely on any single factor. NTN/SNR argues that the determinations Timken cites do not support Timken's position that the Department should deviate from its *Preliminary Results* because these determinations do not represent fact patterns which are similar to those in the current proceeding.

NTN/SNR concludes that the operations of post-acquisition SNR are essentially inclusive of the operations of pre-acquisition SNR. According to NTN/SNR, the post-acquisition management, channels of distribution, customers, and product mix have not materially changed from those of pre-acquisition SNR. Moreover, NTN/SNR contends, nothing in Timken's case brief provides any contrary evidence. Accordingly, NTN/SNR argues, the Department should affirm its *Preliminary Results* that post-acquisition SNR should be assigned the same antidumping-duty treatment as pre-acquisition SNR.

Department's position: In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in the following: (1) management; (2) production facilities; (3) supplier relationships; (4) customer base. See, e.g., *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 69941 (November 18, 2005), and *Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (January 2, 2002). While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. See *Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999). Furthermore, as both Timken and NTN/SNR acknowledge, the Department evaluates the "totality of circumstances" in making its determination. See, generally, *Brass Sheet*, 57 FR at 20461. Thus, if record evidence demonstrates that, with respect to the production and sales of subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

We continue to find that post-acquisition SNR is the successor-in-interest to pre-acquisition SNR because its operations are not materially dissimilar from those of its predecessor. The basis for the Department's determination is that record evidence demonstrates that there have only been minor changes in management, production facilities, supplier relationships, and customer base.

With respect to management, the record shows that "none of {SNR's} senior managers or plant managers have changed as a consequence of the acquisition" and that the only changes have been "that a senior official of NTN Corporation has joined SNR's board of directors" and that only "one executive of SNR now acts as an Executive Officer of NTN Corp." See SNR's August 21, 2009, submission at pages 4-5. Timken cites to no evidence on the record

contradicting this information. Accordingly, the Department finds that there have not been substantial changes to SNR's management as a result of the acquisition.

With respect to its production facilities, SNR had five plants in France, three of which produced ball bearings. See SNR's August 21, 2009, submission at page 5. Furthermore, there "have been no changes to the product mix or production at the plants" with the exception of one of SNR's ball bearings plants. *Id.* The information cited by Timken does not contradict SNR's submission. The only question is whether the change in the plant in question has been so substantial that SNR's operations, as a whole, are materially dissimilar from its operations prior to the acquisition. The Department finds that this is not the case. Specifically, the change in operations affects only one of five SNR plants in France. Furthermore, a comparison of the change in production capacity at this plant prior to and after acquisition (see SNR's October 23, 2009, submission at page 1 and Exhibit 2) shows that the change at this plant has not been so substantial as to lead to a conclusion that it is now effectively a different plant or that post-acquisition SNR's production facilities have materially changed from its pre-acquisition facilities.

With respect to supplier relationships, the record indicates that there "was no change in {SNR's} supplier relationships pre- and post-acquisition." See SNR's October 23, 2009, submission at page 2. Timken argues that SNR's submission is contradicted by NTN's statement that it will promote joint procurement for parts and materials. By itself, NTN's stated intent to promote joint procurement does not indicate whether SNR will use different suppliers than it did prior to the acquisition. Thus, we are not persuaded by Timken's argument that NTN's promotion of joint procurement with SNR will result in a change in supplier relationships.

With regard to the customer base, the record indicates that there were only minor changes in SNR's pre- and post-acquisition customer base in France and in the United States. See SNR's October 23, 2009, submission at Exhibits 4 through 7. Timken does not challenge SNR's submission directly but suggests that many of SNR's bearings will now be imported by NBCA (an NTN company) and warehoused at NTN's facilities and that there will be a single point of contact to the customer. Prior to the acquisition, however, the record indicates that SNR sold many of its bearings through a U.S. affiliate, which is the same as it is doing now. While the Department acknowledges that post-acquisition SNR may now be selling to its U.S. customers through a different U.S. affiliate (NBCA), we do not find that this makes SNR's current selling practices in the United States materially dissimilar from its practices prior to the acquisition, given that it is still selling the same bearings to the same customers through a U.S. affiliate.

Although Timken alleges that NTN and SNR have integrated to such an extent that post-acquisition SNR is now essentially a different entity than prior to the acquisition, the evidence on the record does not support Timken's argument. While it appears there may have been some consolidation with respect to the marketing of SNR's bearings, fundamentally, post-acquisition SNR has the same customers buying the same bearings produced at the same plants as pre-acquisition SNR. In addition, as described above, SNR purchases the inputs it needs to produce bearings from the same suppliers as prior to the acquisition. Accordingly, the Department finds that SNR's operations after the acquisition are materially similar to its operations prior to the acquisition.

Finally, many of the allegations Timken makes, such as integration of NTN and SNR operations, product mix, plans to close SNR's U.S. warehouse and consolidate everything into NTN's Norcross warehouse, refer to NTN/SNR's prospective plans. Regardless of Timken's

assertions, the question before the Department in this changed-circumstance review is not whether NTN and SNR's relationship might change in the future but, rather, whether post-acquisition SNR, as presently constituted, is the successor-in-interest to pre-acquisition SNR.

Therefore, based on the totality of the circumstances, we find that any changes in SNR's management, production facilities, supplier relationships, and customer base that have occurred since the acquisition are not so substantial that we should conclude that SNR's operations after the acquisition are materially dissimilar to its operations prior to the acquisition. Additionally, we agree with NTN/SNR's argument that Timken's presumable reliance on *Polychloroprene Rubber*, *Brass Sheet*, *PSF*, and *Lumber* as controlling precedent concerning the Department's practice is misplaced because those determinations were based on specific facts and circumstances which were not present in this proceeding. Accordingly, based on the record evidence in this proceeding and consistent with the Department's practice, the Department concludes that post-acquisition SNR is the successor-in-interest to pre-acquisition SNR.

### **Briefing Schedule**

Comment 2: NTN/SNR argues that the Department should not have extended the deadline for submitting case briefs. Citing 19 CFR 351.309(c), NTN/SNR asserts that an interested party may submit a case brief within 30 days after the date of publication of the preliminary results of review unless the Department alters the time limit. According to NTN/SNR, if the Department wanted to alter the time limit for submitting case briefs, it should have done so before it published the briefing schedule in the *Preliminary Results*. NTN/SNR asserts that the Department did not alter the briefing schedule until after NTN had filed its case brief on December 18, 2009, and it was, thus, too late for the Department to revise its published schedule.

Timken argues that the Department has discretion to extend previously established deadlines. Citing 19 CFR 351.302(b), Timken contends that the Department may extend any time limit unless expressly precluded by statute. Timken asserts that the regulations expressly refer to the possibility that the Department may change the deadline. Timken alleges further that the deadline for submitting case briefs was actually December 21, 2009, and, therefore, the Department changed the deadline prior to the date the case briefs were due.

Department's position: The Department's regulations at 19 CFR 351.309(c)(1)(ii) and (d) enumerate the normal deadlines for case and rebuttal briefs "unless the Secretary alters the time limit." Thus, the Department may alter the time limit for submitting case and rebuttal briefs if it determines there is good cause to do so. In the present proceeding, the Department determined that there was good cause to extend the briefing schedule. Specifically, we extended the deadline for submitting case briefs because, as Timken pointed out in its December 18, 2009, letter requesting additional time, the regulatory deadline for submitting new factual information, pursuant to 19 CFR 351.301(b)(3), was originally after the deadline established for case briefs in the *Preliminary Results*.

## **Filing of Factual Submissions**

Comment 3: NTN/SNR argues that both of Timken's factual submissions were not filed properly because they did not contain certifications of accuracy in accordance with 19 CFR 351.303(g). NTN/SNR contends that, because the Department agreed that the factual submissions lacked the required certifications, Timken's submissions were not on the record in this case. NTN/SNR also asserts that the regulations do not provide for re-submission in this instance. Furthermore, NTN/SNR argues that, because the deadline for submission of factual information had passed, the Department should have rejected Timken's factual submissions. According to NTN/SNR, the Department's acceptance of Timken's re-filed factual submissions prejudiced NTN/SNR's ability to address any such factual information in its case brief.

Citing 19 CFR 351.302(b), Timken argues that the Department may extend any time limit unless expressly precluded by the statute. Thus, according to Timken, the Department's decision to permit Timken to re-file its factual submissions was entirely within the express instructions of the applicable regulations. Timken asserts further that there is no prejudice to NTN/SNR because the factual submissions were filed originally on December 16, 2009, and February 5, 2010, whereas NTN/SNR's case brief, as extended, was due on February 19, 2010. Thus, Timken claims, NTN had ample opportunity to review the factual submissions.

Timken contends further that the certifications were not necessary. According to Timken, because the information contained in its factual submissions consisted of public information, including information published by NTN as well as information from trade press, a certification by Timken's company officials could not logically assure the Department of the completeness and accuracy of this factual information. As a result, Timken argues, the certification requirement in 19 CFR 351.303(g) was not applicable to its factual submissions and the Department should not have required Timken to file such certifications.

Department's position: NTN/SNR is incorrect in asserting that Timken's factual submissions were not on the record because they were filed improperly. Submissions by an interested party are on the record of the proceeding until the Department removes them. In this case, the Department gave Timken a chance to remedy its otherwise timely filed submissions with the warning that, if it did not certify its submissions in accordance with 19 CFR 351.303(g), the Department would "reject {Timken's} submissions and {would} not consider any information contained therein for the final results of this changed-circumstance review." See letter from Laurie Parkhill to The Timken Company dated February 18, 2010. Because Timken did re-file its submissions with the certifications, we did not reject its submissions and they remain on the record of this review. Accordingly, NTN/SNR's ability to address any such factual information in its case brief was not prejudiced because Timken perfected its submissions and they were never taken off the record; accordingly, NTN/SNR had the opportunity to review this information prior to the deadlines for submitting its case and rebuttal briefs.

Moreover, if NTN/SNR felt it could not address Timken's submissions without the certifications, NTN/SNR could have submitted its letter complaining that Timken's factual submissions were not filed properly earlier than the day before the briefs were due (as extended). Furthermore, if NTN/SNR felt it needed more time to examine Timken's factual submissions in order to address them in its briefs, it could have asked for an extension of the deadline of the case briefs, but it did not do so. Accordingly, we determine that NTN/SNR's argument is without

merit. Finally, because Timken did re-file its submissions with a certification of accuracy, pursuant to the requirements of 19 CFR 351.303(g), the Department has determined that its argument concerning whether such a certification was necessary is moot.

Recommendation

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

Agree \_\_\_\_\_ Disagree \_\_\_\_\_

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Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

\_\_\_\_\_  
(Date)