

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

FROM: Stephen J. Claeys /i/SJC
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Changed-Circumstances
Review Concerning myonic GmbH and the Antidumping Duty
Order Covering Ball Bearings and Parts Thereof from Germany

Summary

We have analyzed the case and rebuttal briefs of interested parties in the changed-circumstances review concerning myonic GmbH (myonic) and the antidumping duty order covering ball bearings and parts thereof from Germany. As a result of our analysis, we have found that myonic GmbH is the successor-in-interest to Miniaturkugellager Gesellschaft mit beschränkter Haftung (MKL) and, as a result, should be accorded the same treatment previously accorded MKL with regard to the antidumping duty order on ball bearings and parts thereof from Germany. We recommend that you approve the positions described in the Discussion of the 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. Changes to MKL
2. Totality of the Circumstances

Background

On May 7, 2008, the Department published a notice of preliminary results of its changed-circumstances review of the antidumping duty order on ball bearings and parts thereof from Germany in which it preliminarily determined that myonic is the successor-in-interest to MKL and should be accorded the same treatment previously accorded MKL with regard to the antidumping duty order on ball bearings and parts thereof from Germany. See Preliminary Results of Antidumping Duty Changed-Circumstances Review, 73 FR 25663 (May 7, 2008) (Preliminary Results). We gave interested parties the opportunity to comment on our Preliminary Results. On May 21, 2008, the petitioner, the Timken Company (Timken), submitted a case brief. Myonic submitted a rebuttal brief on June 17, 2008.

Discussion of the Issues

1. Changes to MKL

Comment 1: Timken argues that, based on the changes to MKL's management, production facilities, suppliers, or customer base, the Department should modify its preliminary determination and find that myonic is not the successor to MKL. Timken asserts that, since the 1996 new shipper-review, MKL has changed ownership, reorganized its corporate structure, modified its distribution, transferred production from Switzerland to Germany, and maintained an assembly operation in the Czech Republic.

With respect to ownership, Timken asserts, MKL has always produced bearings in Germany but was owned by RMB, a Swiss company, that also produced bearings in Switzerland. Timken comments that MKL sold bearings to U.S. customers directly or via RMB Inc., an affiliate of MKL's Swiss parent, located in the United States. Timken also states that RMB also had an affiliate in France that sold MKL bearings in Europe, an affiliate in Italy that sold MKL bearings in Italy, and an affiliate in the United Kingdom that sold MKL bearings in the United Kingdom. Timken argues that substantial ownership changes were made since the myonic name change in 2001. According to Timken, this included the sale of RMB's affiliates in France and Italy and a 2006 reorganization of the myonic group in which the operationally inoperative myonic Holding GmbH, a previously inactive operationally registered company, acquired 100 percent of the shares of myonic GmbH and one percent of the Czech company and myonic GmbH itself acquired myonic USA (formerly RMB Inc.), the United Kingdom affiliate, and 99 percent of the Czech company.

Timken argues that these ownership changes have had a profound effect on the indicators normally considered by the Department in the context of succession issues. For example, with regard to production, Timken comments that, starting in 2002, production done previously in Switzerland was moved to Germany. Furthermore, with respect to management, Timken asserts that ownership of the German production facility was effectively transferred away from the Swiss parent company, which became non-operating, to myonic Holding GmbH in Germany. Finally, with respect to distribution, Timken contends that the 2002 sale of the affiliates in France and Italy altered myonic's product distribution. Timken also suggests that the role of the Czech facility too is likely to be different. Stating that the facility myonic described as assembling bearings from components made in Germany, Timken argues that the role of this facility is likely to be more substantial than at the time of MKL's new-shipper review and that any expansion or increase in the role of this facility should be taken into account by the Department in determining the succession issue.

Myonic argues that Timken raised the same events already reported and considered by the Department in its preliminary results. Myonic asserts that its management after the 2006 reorganization is essentially identical to its 2001 management which predates the ownership change. Further, myonic asserts that Timken's argument that the ownership changes in 2006 had a profound effect on management is incorrect. Myonic asserts that, as indicated in its submissions, numerous officers and managers were identical before and after the ownership

change. Myonic also argues that it uses the exact same production facilities that MKL used previously in Germany. Myonic contends that Timken mischaracterizes the facts concerning the production facility in Switzerland. Myonic states that RMP, the owner/parent of MKL, operated production plants previously in both Switzerland and Germany which both produced miniature ball bearings. According to myonic, the group consolidated this duplicative production at the German production plant which was the same plant MKL used previously in Germany before its name change to myonic. Furthermore, myonic indicates, it continues to assemble the miniature ball bearings in the Czech Republic just as MKL did and Timken's assertion that the Czech facility's role as an assembly plant has changed is unsupported and contradicted the facts. Finally, myonic argues that its supplier relationships and customer base remain essentially unchanged. Myonic also indicates that, although it sold its French and Italian sales companies, they continue to distribute myonic's production in France and Italy exclusively through these same companies and that this change has had little impact on its supplier relationships and customer base.

Department's Position: After the initiation of a changed-circumstances review involving 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. While no single factor or combination of factors will necessarily be dispositive, generally the Department will consider the new company to be the same as those of the predecessor company if the resulting operations are essentially the same as those of the predecessor. See Preliminary Results at 25663.

Based on our review of the record we find that none of the four criteria indicated above have changed significantly with respect to MKL's successor company, myonic. While there have been some internal changes in ownership brought about by the myonic Group's reorganization, the management team of myonic has remained essentially the same with no more changes than can be expected in any firm's operations over a period of years. The fact that the myonic Group closed its production plant in Switzerland and consolidated its production of miniature bearings in its production plant in Germany does not change the fundamental role of the German plant which is to produce miniature bearings. Although there may be fewer fundamental changes such as in the plant's capacity utilization or the types or varieties of miniature bearings produced at the German plant, these changes do not alter the previous nature of that plant. The fact that the myonic group no longer owns its distributors in France and Italy is not a relevant factor in our decision on the successorship question. Similarly, the fact that the myonic group continues to assemble bearings in the Czech Republic from parts made in Germany (as it did prior to the reorganization) is more relevant to issues pertaining to an administrative review as opposed to a successor-in-interest decision. Finally, the record does not indicate, nor does Timken allege, substantial changes in myonic's supplier relationships or customer base. Therefore, based upon our analysis of the four criteria, we continue to find that myonic is the successor in interest to MKL.

2. *Totality of the Circumstances*

Comment 2: Timken comments that the Department has asserted repeatedly that it accounts for the totality of the circumstances when determining successor issues. Here, Timken contends, the circumstances of the successorship claim are unique and warrant strict scrutiny.

Timken argues that, because the company has not been reviewed by the Department in more than ten years and, moreover, the only review it ever conducted was a new-shipper review, the Department does not have a database of reported sales, company financial data, detailed descriptions of distribution channels, and descriptions of production facilities. Timken asserts that such data would have been available had there been reasonably recent administrative reviews. Timken argues further that the lack of adequate references for comparison makes the Department's determination difficult at best. For example, Timken asserts, the Department is unable to compare pre- and post-event customer databases to examine whether there has been a significant change or to observe whether any changes are within the range of changes that one would expect over time in the same operation. Finally, Timken suggests, other events of significance such as myonic's sale of assets to another firm or its divesting of a microsystem business should be charged against the assertions made by the claimants in the form of adverse facts available.

Myonic argues that the Department must apply its normal review standard for changed-circumstance reviews. Myonic alleges that, because Timken is unable to undermine the record information, it asserts in the alternative, that a different standard of review should apply, including the application of adverse facts available to any allegedly missing information. Myonic asserts that it has been fully cooperative in this review and the fact that Timken neither participated in MKL's new-shipper review nor previously requested an administrative review of MKL's exports to the United States should not somehow change the standard of review.

Department's Position: While the Department does consider the totality of circumstances when considering successor issues, meaning that any successorship analysis ultimately seeks to determine whether the operations of the new company are essentially the same as the predecessor company, the Department will not limit itself to the four factors described above in reaching this determination.

For reference to "totality of circumstances," see the Issues and Decision Memorandum accompanying Brass Sheet and Strip from Canada: Final Results (57 FR 20460) (May 13, 1992). The fact that myonic has not been subject to an administrative review in over ten years does not lead to the conclusion that our changed-circumstance review record is incomplete in evaluating changes in the firm's management, production facilities, supplier relationships, and customer base. Timken raises no issues that would suggest the Department needs to look beyond these factors in reaching a determination here. The lack of an administrative review does not invalidate our decision on this matter. In addition, other parties, including Timken, have had opportunities to request an administrative review of myonic's sales and chose not to do so. If Timken thought the record was deficient in any way it had ample opportunity during the earlier stages of this changed-circumstance review to submit comments to this effect. With respect to other matters, Timken's comments do not explain or elaborate on how myonic's sale of assets or its divestiture of its microsystem business are relevant to our successor-in-interest decision concerning ball bearings from Germany. Based upon our examination of these

comments, we find nothing in the totality of the circumstances surrounding this changed-circumstances review to support a change in our decision.

Recommendation

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

Agree X

Disagree _____

/s/ David M. Spooner

David M. Spooner
Assistant Secretary
For Import Administration

12/01/08

Date