

June 1, 2010

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

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for AD/CVD Operations

RE: Changed Circumstances Review: Fresh and Chilled
Atlantic Salmon from Norway

SUBJECT: Issues and Decision Memorandum for Final Determination

I. Summary

On August 5, 2009, the Department of Commerce (the Department) published the Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Fresh and Chilled Atlantic Salmon from Norway, 74 FR 39045 (August 5, 2009) (Preliminary Results). We have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s response to the issues raised in the briefs and recommend that you approve the positions described in this memorandum.

Below is a complete list of the issues in this changed circumstances review (CCR) for which we received case brief and rebuttal comments from interested parties:

- Comment 1 Evidence on the Record to Support a CCR
- Comment 2 Comparison of Nordic Group A/L Relative to Nordic Group AS
- Comment 3 CCR Criteria With Respect To Nordic AS
 - A) Customer and Supplier Relationships
 - B) Management Structure and Board of Directors
 - C) Production Facilities
- Comment 4 Document Retention
- Comment 5 Timeliness of Nordic AS Request for a CCR

Comment 6 Nordic Group Utilizing the Zero Percent Rate

Comment 7 Nordic Group AS's Corporate History

Comment 1: Evidence on the Record to Support a CCR

Petitioner¹ argues that when analyzing whether one company is the successor-in-interest to another, the Department evaluates whether the successor company operates as “the same business entity” as the predecessor company, and whether the successor company’s operations are “essentially the same as those of the predecessor company.” See Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review, 64 FR 9979, 9980 (March 1, 1999).

Petitioner claims that when determining whether this standard is met, the Department typically compares several factors including, but not limited to, the predecessor and successor company’s: “(1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.” See Certain Cut-To-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, 70 FR 22847 (May 3, 2005) (Steel Plate from Romania) (citing Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review, 57 FR 20460 (May 13, 1992)).

Petitioner argues that the record in this proceeding makes clear that Nordic Group AS² has failed to place on the administrative record information that would enable the Department to apply its standard analytical framework to evaluate whether Nordic Group AS’s operations with respect to fresh Atlantic salmon (FAS) from Norway are “essentially the same” as those of Nordic Group A/L, with respect to the relevant factors taken into consideration. As such, petitioner argues, the administrative record does not contain substantial evidence that Nordic Group AS is the successor-in-interest to Nordic Group A/L.

Petitioner disputes Nordic Group AS’s contention that there is sufficient information on the record because it ignores the numerous questions that it has raised since the publication of the Preliminary Results; specifically that there is no information on the record concerning the supplier and customer base of Nordic Group AS when it operated under the name Nordic Group ASA. Further the information submitted concerning the supplier relationships and customer base of Nordic Group ASA in 1997 does not distinguish between Nordic Group A/L’s operations as compared to Nordic Group AS’s involving different seafood products.

Nordic Group AS states that after the Department reviewed the evidence in the context of the Department’s analytical framework for CCRs, the Department issued its Preliminary Results wherein the Department concluded that the evidence submitted by Nordic Group AS:

¹ Petitioner is Cooke Aquaculture Inc.

² Respondent is Nordic Group AS.

Demonstrates that there was little to no change in management structure, sales, operation, supplier relationships or customer base. . . Based on the record evidence, we find that Nordic Group AS operates as the same business entity as Nordic Group A/L. See 74 FF at 39046 -39047.

Nordic Group AS contends that the Department's preliminary findings contradict petitioner's assertions that Nordic Group AS has failed to provide "substantial evidence." Nordic Group AS argues that it has in fact submitted substantial evidence that fully supports an affirmative final successor-in-interest finding. Nordic Group AS asserts that petitioner has not in any way placed any information on the record that would cause the Department to reconsider its preliminary decision.

DOC POSITION: In the Preliminary Results the Department found that Nordic Group AS had satisfied the necessary evidentiary requirements. Specifically, the Department found that:

. . there was little to no change in management structure, sales operations, supplier relationships, or customer base. For these reasons, we preliminarily find that Nordic Group AS is the successor-in-interest to Nordic Group A/L and, thus, should receive the same antidumping duty treatment with respect to fresh and chilled Atlantic Salmon from Norway. See Preliminary Results 74 FR at 39047.

Since the Preliminary Results Nordic Group AS has submitted information on the record concerning its management and board structure in addition to the information already on the record concerning its sales operations, customer and supplier relationships. See Comment 3 below for additional information, regarding Nordic Group AS's customer/supplier base and management structure and how the facts surrounding these issues support an affirmative final successor-in-interest finding. The Department, therefore, continues to find that substantial evidence on the administrative record supports the conclusion that Nordic Group AS is the successor in interest to Nordic Group A/L.

Comment 2: Comparison of Nordic Group A/L Relative to Nordic Group AS

Petitioner notes that in its request for a CCR, Nordic Group AS specifically requested that the Department determine whether Nordic Group AS is the successor-in-interest to Nordic Group A/L, the entity to which the Department assigned a company-specific cash deposit rate in a new shipper review that examined a sale completed by Nordic Group A/L in June 1995. See Fresh and Chilled Atlantic Salmon From Norway; Final Results of New Shipper Antidumping Duty Administrative Review, 62 FR 1430 (January 10, 1997) (Salmon from Norway NSR).

Petitioner states that the Department preliminarily determined that the proper basis of comparison in this proceeding is whether Nordic Group AS is the successor-in-interest to Nordic Group A/L. As such, petitioner argues, that it is undisputed that the parties to this proceeding and the Department all agree that the proper basis of comparison is the operation of Nordic

Group A/L relative to those of Nordic Group AS with respect to each company's: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base, as they relate to the production and sale of FAS from Norway.

Petitioner contends that in completing this analysis, the Department also must be mindful of information Nordic Group AS has placed on the administrative record relating to changes in corporate form that occurred between 1996 and 2001. In particular, an affidavit submitted with Nordic Group AS's request for the initiation of a CCR asserts that:

1. Nordic Group was founded in 1967 in Trondheim, Norway under the name Nordic Group A/L. (The designation 'A/L' indicates that a business entity is a cooperative.)
2. In 1996, Nordic Group A/L changed its name to Nordic Group ASA, Trondheim, Norway. (The designation 'ASA' indicates a business entity is a publicly held limited liability company).
3. In 2001 Nordic Group ASA changed its name to Nordic Group AS.
See Nordic Group AS's June 12, 2009, letter to the Department at Exhibit 1.

Petitioner argues that information placed on the administrative record by Nordic Group AS makes clear that Nordic Group A/L ceased to be a going concern in 1996. Between 1996 and 2001, Nordic Group ASA, a publicly held limited liability company, was in operation. Thus, in order to compare the operations of Nordic Group A/L and Nordic Group AS, as they relate to the production and sale of FAS from Norway, the Department must evaluate the operations of Nordic Group A/L during or prior to 1996, relative to the current operations of Nordic Group AS.

Nordic Group AS agrees with petitioner on the framework analysis the Department should conduct in making a determination whether a respondent is the successor-in-interest to an entity with a company-specific margin under the anti-dumping order. While no single factor will necessarily be dispositive, Nordic Group AS states that the Department generally will consider a new company to be the successor to the previous company if its resulting operations are similar to that of the predecessor. If the evidence demonstrates that, with respect to the sale of the subject merchandise, the new company operates in essentially the same manner as the former company, the Department will treat the new company as the successor-in-interest to the predecessor company. See Notice of initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Stainless Steel Wire Rod from Italy, 71 FR 13964 (March 20, 2006); Stainless Steel Sheet and Strip in Coils from Germany: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, 67 FR 49005 (July 29, 2002).

Nordic Group AS states that the Department has already determined that the documentation submitted on behalf of Nordic Group AS, “demonstrates that there was little to no change in the management structure, sales operations, supplier relationship or customer base.” See Preliminary Results, 74 FR at 39047. Nordic Group AS argues that record evidence continues to support the conclusions the Department reached in the Preliminary Results.

DOC POSITION: As noted below in Comment 3, the Department found little to no change in the management structure, sales operations, supplier relationship or customer base of the Nordic Group A/L and Nordic Group AS. The Department finds that the entities listed above by petitioner, Nordic Group AS, Nordic Group A/L and Nordic Group ASA was clearly each part of the Nordic Group leading up to its present form, Nordic AS.

Comment 3: Changed Circumstances Criteria of Nordic AS

A. Customer and Supplier Relationships

Petitioner notes that in requesting the initiation of this proceeding, Nordic Group AS submitted a document captioned “Nordic Group A/S Supplier List” that included a list of suppliers to the Nordic Group ASA in 1997 and to Nordic Group AS in 2007. Nordic Group AS’s submission states that “{s}ixty-nine percent of current Nordic Group AS seafood supplies are from the same companies that supplied Nordic Group AL in 1997.” See Nordic Group AS’s June 12, 2009, letter at 6. Petitioner contends that this information and Nordic Group AS’s representations concerning it raise three issues.

First, petitioner contends that the information on Nordic Group ASA’s suppliers in 1997 is not relevant to Nordic Group A/L’s suppliers during or prior to 1996, when that company was a going concern. In fact, there is no evidence on the record of Nordic Group A/L’s suppliers during or prior to 1996. As a result, the Department cannot, as is required by its established practice, compare the supplier relationships of Nordic Group A/L with the current supplier relationships of Nordic Group AS.

Second, the information submitted by Nordic Group AS, reflecting that company’s supplier relationships in 2007, does not identify entities that are current suppliers to Nordic Group AS. Given that its request for a CCR was filed on June 12, 2009, Nordic Group AS should have submitted information on its supplier relationships as they existed at the time or at a minimum for full year 2008. Instead, petitioner notes that Nordic Group AS elected to submit information on its supplier relationships that was at least 18 months out of date. As such, there is no information on the record that could constitute substantial evidence in support of a finding by the Department that Nordic Group AS’s current operations are substantially the same as Nordic Group A/L.

Third, petitioner contends the information on supplier relationships submitted by Nordic Group AS is not specific to suppliers of FAS, making it impossible for the Department to compare Nordic Group A/L’s and Nordic Group AS’s supplier relationships. Rather, Nordic Group AS submitted information concerning “seafood” suppliers of Nordic Group ASA in 1997

and Nordic Group AS in 2007. Petitioner states that as the administrative record in this proceeding makes clear, the various Nordic Group enterprises sold many different varieties of seafood in addition to FAS during their separate, legal existences.

Petitioner states that the information submitted by Nordic Group AS does not allow the Department to compare the supplier relationships of Nordic Group A/L and Nordic Group AS, with respect to the sale of the subject merchandise, which is the Department's standard analytical framework.

Petitioner argues that the lack of information submitted by Nordic Group AS regarding supplier relationships also exists with respect to the customer bases of Nordic Group A/L and Nordic Group AS. First, petitioner notes that Nordic Group AS submitted information identifying entities that purchased seafood products from Nordic Group ASA in 1997 when, according to petitioner, Nordic Group ASA was not in operation. However, Nordic Group AS did not submit any information concerning the customer base of Nordic Group A/L for this period. As such, petitioner claims there is no information on the administrative record that would enable the Department to compare and evaluate the extent to which Nordic Group A/L's customer base is "substantially the same as" the customer base of Nordic Group AS.

Second, petitioner contends that it is unclear from the administrative record whether the information submitted by Nordic Group AS concerning "current" customers reflects the company's customers in 2007 or whether the information is reflective of the company's customers in 2008 or 2009. See Nordic Group AS's June 12, 2009, letter at Exhibit 5. Petitioner claims that it is reasonable to assume that Nordic Group AS has provided information about its "current" customer base as of 2007, and thereby has failed to provide the Department with current information that would allow an appropriate basis of comparison.

Third, petitioner contends that the record information submitted by Nordic Group AS on its "current" customer base fails to distinguish between customers of FAS and customers of the many other seafood products it sells. Petitioner notes that the record contains no information regarding Nordic Group A/L's customer base during or before 1996. Thus, petitioner concludes, given the broad range of seafood products sold by Nordic Group AS and the customers of Nordic Group A/L, it is obvious that the two companies would have customers that do not purchase FAS. As a result, argue petitioners, the Department lacks an administrative record that would enable it to compare the customer bases of Nordic Group AS and Nordic Group A/L, as it pertains to FAS.

Nordic Group AS states that suppliers to the company, allowing for normal attrition, including bankruptcies, have remained essentially the same today as the suppliers in 1997. The Nordic Group A/L supplier base consisted of fish processors with a clear majority of current Nordic Group AS's seafood suppliers remaining the same as the companies that supplied the Nordic Group A/L in 1997. See Nordic Group AS's June 12, 2009, letter at Exhibit 4.

Nordic Group AS argues that it has been in continuous existence as a corporate entity since its inception in 1967. It further argues that its name changes did not result in the company ceasing to operate as a going concern.

In its CCR request, Nordic Group AS noted that the Salmon from Norway NSR calculated a de minimis AD margin for Nordic Group A/L. Given the fact that the zero percent margin did not come into effect until 1997, Nordic Group AS, in its CCR request, took the position that the appropriate starting point for this proceeding is 1997 and submitted evidence for the record accordingly. Nordic Group AS argues that there is absolutely no record evidence to support petitioner's preference for 1996 as the starting point.

Nordic Group AS states that a substantial portion of the Nordic Group A/L's 1997's customers still remain customers of Nordic Group AS and others that no longer remain are due to business closures and mergers within the customer base. See Nordic Group's June 12, 2009, submission at Exhibit 5. The respondent adds that, as with other industries, smaller customers disappear over time and few and larger companies emerge. These companies, in turn, may seek out new suppliers, causing some changes in a company's customer base. In sum, Nordic Group AS concludes that its customer base is essentially the same at Nordic Group A/L.

DOC POSITION: We disagree with the claim that the continuity of Nordic Group AS's supplier relationships are suspect due to the fact that Nordic Group AS has based its claims on too narrow a time period (i.e., a period beginning in 1997). First, we note that there has been no evidence placed on the record that Nordic Group AS in its various forms ever ceased operations. Therefore, we find that comparing the suppliers of Nordic Group A/L to those of Nordic Group A/S is relevant.

Furthermore, 1997 is an appropriate year for the Department to analyze if Nordic Group AS is the appropriate successor-in-interest to Nordic Group AS because Nordic Group A/L requested a new shipper review in 1995 and the subsequent margin came into effect in 1997. See Salmon from Norway NSR. Thus, we find that 1997 marks the correct starting point for evaluating Nordic Group AS's claim of changed circumstances.

We further find that Nordic Group AS has submitted information that its supplier and customer bases, despite a period of over ten years, is substantially the same as it was for Nordic Group A/L in 1997. Its suppliers consist of fish processors, which are the same companies that supplied Nordic Group AL and that Nordic Group AS/Nordic Group AL has retained a significant majority of its customer base over a ten year period. See Nordic Group AS's June 12, 2009 submission at Exhibits 4 and 5.

B. Management Structure and Board of Directors

Petitioner contends that information submitted by Nordic Group AS in response to the Department's questionnaire makes clear that there have been significant changes to the

management team and board of directors of Nordic A/L, relative to those of Nordic Group AS. Petitioners assert that with respect to the management of Nordic A/L relative to that of Nordic Group AS, the record demonstrates that:

- The individual serving as the managing director – the single official responsible for the company’s overall operations – has changed from Per A. Swensson, who was the managing director of Nordic A/L in 1996, to Richard Stien, who served as the managing director of Nordic Group AS in 2009. See Nordic Group AS’s December 22, 2009, submission at 2, 3.
- One of the three sales director positions maintained by Nordic A/L during 1996 was subsequently eliminated by either Nordic Group ASA or Nordic Group AS. Further, the two sales directors employed by Nordic Group AS have significantly different responsibilities than their predecessors with Nordic A/L. See id.
- The position of controller, which Nordic A/L considered a key management position, is not considered as such by Nordic Group AS, although that company does employ a controller. See id. at 2, 3 and Attachment 2

Thus petitioner asserts the record before the Department makes clear four of the six individuals identified as “key members” of Nordic A/L’s management team in 1996 – including the individual employed as the managing director, a position that Nordic Group AS characterizes as being responsible for the “overall management” of the company - are not employees of Nordic Group AS.

In addition petitioner notes that the information submitted by Nordic Group AS reflects substantial changes in Nordic A/L’s board of directors in 1996, relative to Nordic Group AS’s current board. In particular, the record shows that:

- Nordic A/L’s board of directors consisted of seven individuals in 1996, and was chaired by Halvard Halvorsen. See Nordic Group AS’s December 22, 2009, submission at 4.
- Only two of the individuals on the board of Nordic A/L in 1996 – Terje Korsnes and Kjell Olaf Larsen – continue to serve on the board of Nordic Group AS in 2009. See id. at 5.

Further, petitioner notes that the information on the record reflects that the size of Nordic Group AS’s board of directors has been reduced from seven for Nordic A/L to three for Nordic Group AS, reflecting a concentration of authority within a select number of individuals.

Petitioner asserts that the information placed on the record by Nordic Group AS reflects a concerted effort by Terje Korsnes, the individual who acquired control of Nordic Group, to “assert control over” Nordic Group AS’s operations and “change direction in {the} company’s goals and decision-making.” See id. at 5.

Petitioner contends the change in the management structure of Nordic Group AS has resulted in significant change in the nature of the sales operations now conducted by Nordic Group AS compared to those conducted by Nordic A/L in 1996. Nordic Group AS's management in 2009 is smaller; two managers for Nordic Group AS compared to three for Nordic A/L. Petitioners further argue that the management of Nordic Group AS is responsible for broader responsibilities as compared to Nordic A/L, where the sales managers were focused on more regional markets. See Nordic Group AS's December 22, 2009, submission at 2. Thus, petitioner argues, the organizational structure of Nordic Group AS's sales and marketing operations reflect a marked change from those of Nordic Group A/L.

Petitioner notes that in responding to the Department's request for information relative to changes in the composition of the boards of directors of Nordic Group A/L and Nordic Group AS, the questionnaire response of Nordic Group AS states "{c}ommensurate with the accumulation of ownership by management, controlled by Terje Korsnes, a smaller board was chosen in 2006." See Nordic Group AS's December 22, 2009, submission at 5. Petitioner argues that Nordic Group AS's management structure is a marked contrast to that of Nordic Group A/L, which in 1996 was a co-operative that relied on a large board of directors. Petitioners argue that these differences in management structure between the two entities reflect just the kind of change in control over a company's operations that are intended to alter the direction in a company's goals and decision-making. As such, petitioner argues that the Department must conclude that Nordic Group AS is not a successor-in-interest to Nordic Group A/L.

Nordic Group AS states that the management structure of Nordic Group AS has essentially remained the same since 1997, with the managing director, USA/CEO chairman, sales directors and sales secretaries unchanged. In addition to the continuity provided by the management team, two current members of the Board of Directors of Nordic Group AS were board members in 1997 of Nordic Group ASA. See Nordic Group's June 12, 2009, submission at 4.

DOC POSITION: Concerning the continuity of company personnel, we note that the key management positions for Nordic Group AS, the managing director and the USA/CEO chairman as well as other key positions, are the same as it was for Nordic Group AL. See Nordic Group AS's June 12, 2009, response at 4 and Exhibit 1 and Nordic Group's December 22, 2009, questionnaire response at 3. Specifically the two principal owners, Richard Stien, the Managing Director, who has been with the company since 1997, and Terje Korsnes, the President and CEO and Chairman of the Board, have been with the company since 1992, control a clear majority of Nordic Group AS, and both individuals were in management positions for Nordic A/L. See Nordic Group AS's June 12, 2009, response at 4 and Exhibit 1 and Nordic Group's December 22, 2009, questionnaire response at 3.

Furthermore, the Nordic Group, which was founded in Norway in 1967 under the name “Nordic A/L” to denote that it was a cooperative, has been in continuous existence. In 1996, it changed its name to “Nordic ASA”, which indicated that it was a publicly held company despite having the same organizational structure, management, sales operations, supplier relationships and customer base of “Nordic A/L”. In 2001, to reflect that it had become a privately held limited liability company “Nordic ASA” became “Nordic Group AS”, but again with the same operational structure, management and employees. See Nordic Group AS’s June 12, 2009, submission at Exhibit 1.

The Department disagrees with petitioner’s assertion that because Nordic Group AS over more than a ten year period has reduced the number of sales managers, changed their duties, or had a reduction in board members have effectively changed Nordic Group AS into a different company. It is reasonable to expect that a company will make certain changes to its management structure, especially over a period that spans more than a decade. In this particular proceeding, we find the changes in management structure cited by petitioner are not sufficient for the Department to conclude that Nordic Group AS, in its current form, is essentially different from Nordic Group A/L and, thus, not eligible to be designated as a successor-in-interest to Nordic Group A/L.

C. Production Facilities

Petitioner notes that in its CCR request, Nordic Group AS makes clear that it is a trading company and does not engage in the production or processing of the subject merchandise. Petitioner argues that the administrative record makes clear that Nordic Group A/L, between 1967 and some indeterminate date in 1996 when it ceased to be a going concern, operated as a sales co-operative. See, e.g., Nordic Group AS’s June 12, 2009, letter at 2; Nordic Group AS’s September 16, 2009, submission at 7. Petitioner estimates that the Nordic Group A/L’s shareholders formed that co-operative based on a belief that it would be more efficient to establish a common marketing entity that they could control jointly, rather than endeavor to market their product individually. Petitioners estimate that the impact of this action, however, was that the shareholders’ costs of producing FAS would have affected the prices at which Nordic Group A/L could sell subject merchandise in the United States and elsewhere.

Petitioners contend that Nordic Group AS’s operational structure does not require it to price its products such that its suppliers’ costs of production must be covered in the sales price. Petitioners assert that Nordic Group AS’s sole motivation is to attempt to sell FAS at prices greater than the price it paid to acquire FAS. Thus, to the extent Nordic Group AS is able to source FAS at prices that do not cover the supplier’s costs of production, it would have flexibility to sell that product at an unfair price. As such petitioner concludes there has been a significant change in the production facilities utilized by Nordic Group AS, which has no production facilities and operates as a trading company, relative to those of Nordic Group A/L, which operated to market FAS produced by its shareholders.

Nordic Group AS explains that it does not and never has produced or processed subject salmon or any other seafood product. The company, since its inception, has engaged solely in the purchase, for resale, of seafood products, including subject salmon. See Nordic AS's June 12, 2009, submission at 5.

Nordic AS argues that since it is not a producer or processor, sales operations need to be substituted for production facilities as one of the factors to be considered in this CCR. In that regard, Nordic Group AS argues that its sales operation have remained unchanged relative to Nordic Group A/L. Additionally, respondent adds that the Nordic Group AS, which previously was Nordic Group A/L, utilizes the same marketing slogan through its sales flyer that prominently displayed the "Fjord Fresh" brand.

DOC POSITION: In making a successor-in-interest determination in antidumping proceedings, the Department typically examines several factors including, but not limited to (1) management; (2) production facilities; (3) supplier relationships, and (4) customer base. As such, the Department agrees with the respondent that the mere lack of production facilities is not necessarily a basis for rejecting a CCR request. Rather, the Department's focus is on determining whether the firm requesting the CCR is essentially the same entity that is merely operating under a different. In the instant review this can be achieved by examining the management structure, customer and supplier base of Nordic A/L compared to Nordic Group AS. As explained above, our analysis of these factors indicates that Nordic Group AS is essentially the same entity as Nordic Group A/L.

Comment 4: Document Retention

Petitioner notes that in Nordic Group AS's filings it stated that the company's document retention policy has prevented it from submitting documentation demonstrating that certain individuals were employees of Nordic Group A/L in 1996. See Nordic Group AS's December 22, 2009, submission at 3. Petitioner explains that Nordic Group AS cites the decisions in Bowe Passat and Olympic Adhesives for the proposition that it is unreasonable for the Department to penalize a respondent for failure to submit data that do not exist. See id. (citing Bowe Passat Reinigungs-Und Waschereitechnik GmbH v. United States, 20 CIT 1426, 1435-36, 951 F. Supp. 231, 239 (1996) and Olympic Adhesives Inc. v. United States, 899 F.2d 1565 (Fed. Cir. 1990)). However, petitioner contends that these decisions are not relevant to the present circumstances because the documents in question in the instant CCR were in the possession of Nordic A/L, Nordic ASA and Nordic AS and it was the decision of the companies to destroy the documents. Petitioner contends that Nordic Group AS's failure to submit documentation to the Department establishing certain individuals as key managers of Nordic Group A/L in 1996 is solely the result of the company's decision to destroy such documentation.

Nordic AS argues that the reason the documents no longer exist is because of its document retention policy. Pursuant to that policy company documents are retained only as long as required by the Norwegian tax laws. Norwegian Tax & Accounting Regulations require files

to be kept for ten years. Accordingly, the documents requested by the Department pertaining to individuals employed by Nordic Group A/L no longer exists and are, therefore, unavailable.

DOC POSITION: We agree with the respondent. Both Nordic Group AS and Nordic Group A/L acted within the tax laws of their home country and there is no requirement or penalty within the Department's regulations that companies must submit information that they do not possess.

Comment 5: Timeliness of Nordic AS Request for a CCR

Petitioner notes that more than thirteen years has passed since the Department's last involvement with Nordic A/L, which occurred with its issuance of the Salmon from Norway NSR. Petitioner further notes that, according to Nordic Group AS's current chief executive officer and chairman, subsequent to the issuance of Salmon from Norway NSR, Nordic Group AS exported subject merchandise to the United States in 2003, 2004, and 2005, where it was imported under the zero percent cash deposit rate given to Nordic A/L at the conclusion of the Salmon from Norway NSR.

Petitioner notes that despite this passage of time, Nordic Group AS has now come forward seeking a successor-in-interest finding. This application was made after Nordic Group ASA and Nordic Group AS failed to seek such a determination previously, following changes in its corporate form in 1996 and 2001. As discussed below, Nordic Group AS's actions in this proceeding suggest it has failed to meet its obligations under the U.S. antidumping duty laws.

Petitioners contend that parties seeking to be identified as a successor-in-interest to a company that is assigned an individual cash deposit antidumping rate must fulfill a number of practical obligations. In particular, a successor company has an obligation to inform the Department of material changed circumstances that affect the application of the previously assigned company-specific rate, to request that the Department complete a CCR to determine whether it is the successor-in-interest to its predecessor company, and to avoid misusing the company-specific rate assigned to its predecessor. The Department, according to petitioner, is obligated to make a determination responding to a CCR seeking a successor-in-interest determination, an obligation that is made significantly more difficult with the passage of time between the date when relevant changes in corporate name or form occurred and the date on which a CCR is requested. Petitioner contends that having waited 12 years since the Salmon from Norway NSR and eight years since Nordic Group ASA changed its corporate form and began operations as Nordic Group AS in 2001, Nordic Group AS has clearly waived any right to seek a successor-in-interest designation.

Petitioner asserts that such a determination here is appropriate because it will encourage parties to pursue CCRs while the events that trigger the need for such a proceeding are still fresh. Establishing a presumption that a party that fails to inform the Department of significant changes in its corporate form or operations for more than 12 years would encourage parties to inform the Department promptly of material changed circumstances that impact the Department's administration of the U.S. AD laws. Conversely, an affirmative determination by the

Department in this proceeding would establish a precedent that would encourage companies to delay disclosing changes in their corporate form to the Department.

Nordic Group AS rejects petitioner's arguments that because of the length of time that has passed from the date that Nordic Group A/L acquired a zero percent margin to the date that Nordic Group AS filed its CCR request, that it has waived its right to a CCR. Respondent notes that petitioner does not cite to any statutory provision, Department regulation, prior Department decisions or policy statements, or Department practice to support this argument. There are no such citations because there is no authority or precedent to support this argument. Nordic AS also notes that as a matter of record the Department had no difficulty reaching a preliminary decision on this matter and this argument should be rejected by the Department.

DOC POSITION: There is nothing within the Department's regulations that restrict a company from requesting a CCR because of time concerns, nor did petitioner cite any prior Department decisions, policy statements or Department practice to substantiate its allegations.

6. Nordic Group Utilizing the Zero Percent Rate

Petitioner states that in October 1995, Nordic Group A/L submitted a request for a NSR under the AD order on FAS imports from Norway for the period from May through October 1995. This review was subsequently initiated by the Department, and in its preliminary results the Department found that Nordic Group A/L had not sold subject merchandise in the United States at less than normal value. See Fresh and Chilled Atlantic Salmon From Norway; Preliminary Results of Antidumping Duty New Shipper Administrative Review, 61 FR 51910 (October 4, 1996) (Salmon from Norway NSR Preliminary Results). In the final results of the NSR, the Department assigned Nordic Group A/L a cash duty deposit rate of zero percent, based on its finding that that company's single U.S. sale under review was not sold at a dumped price. See Salmon from Norway NSR. Petitioner contends that at some point in 1996, after its NSR had been initiated but before the final results were issued, Nordic Group A/L reportedly changed its corporate structure under Norwegian law from a cooperative to Nordic Group ASA, a publicly-held limited liability company. See Nordic Group AS's June 12, 2009, letter at 2 at Exhibit 1. However, the Department's final results of the NSR identify only Nordic Group A/L, the Norwegian cooperative, as being the recipient of the zero percent ad valorem duty deposit rate. Further the Department's related cash deposit rate instructions to Customs authorize the use of the zero percent cash deposit rate only for entries from Nordic Group A/L.

Petitioner argues that in 2001, Nordic Group ASA changed its corporate structure under Norwegian law, becoming a privately-held limited-liability company known as Nordic Group AS. See Nordic Group AS's June 12, 2009, letter at 3 at Exhibit 1 (Korsnes Affidavit at ¶ 13). Petitioner contends that, until it filed the CCR request with the Department in June 2009, Nordic Group AS never notified the Department of these significant changes in its corporate organization. For the past nine years, argues petitioner, Nordic Group AS apparently has utilized the zero percent duty deposit rate assigned exclusively to Nordic Group A/L without authority or permission.

Petitioner explains that Mr. Korsnes, who currently serves as the chairman and CEO of Nordic Group AS and the president of Nordic Group, Inc., delivered testimony at the November 10, 2005, public hearing conducted by the U.S. International Trade Commission in connection with the second five-year (“sunset”) administrative review of the AD and CVD orders on FAS imports from Norway. See Cooke’s August 26, 2009, submission at Exhibit 2.

According to petitioner, Mr. Korsnes was part of a Norwegian delegation that testified in favor of revocation of those trade orders, on the ground that the domestic producers of FAS were not likely to be materially injured by renewed FAS imports from Norway if the orders were revoked. In his testimony, argues petitioner, Mr. Korsnes incorrectly stated that Nordic Group AS was awarded a zero percent deposit rate in January 1997. As petitioners note above, it was Nordic Group A/L that was awarded this rate, not Nordic Group AS. See Id., Exhibit 2 at 206. Mr. Korsnes also stated that Nordic Group AS shipped FAS to the United States in 2003, 2004 and 2005. See Id., Exhibit 2 at 206-07. According to petitioner, it appears that, based on Mr. Korsnes’ statements, Nordic Group AS improperly entered imports of FAS under the zero percent deposit rate awarded solely to Nordic Group A/L in the Salmon from Norway NSR.

Petitioner argues that assuming that Nordic Group AS believed during this eight-year period between 2001 and 2009 that it was the lawful corporate successor, through Nordic Group ASA, to Nordic Group A/L, and thus had a right to the latter’s zero percent cash deposit rate, it was required by the U.S. AD law to request that the Department recognize it as such through a CCR. Petitioner contends that such a review would have provided Nordic Group ASA with an opportunity to demonstrate in a timely manner that it should be deemed the successor-in-interest to Nordic Group A/L. Petitioner notes that since Nordic Group AS failed to do so until it filed the CCR request on June 12, 2009, it improperly shipped under the de minimis assigned to Nordic Group A/L.

Petitioner further argues that the instant review is far from the usual “name-change” the Department routinely examines in many CCR proceedings. In the typical CCR, the relevant “changed circumstances” – be it an exporter’s change of its corporate structure or name, or its acquisition by another company - typically occurs within months or weeks of filing the CCR request. In contrast, argues petitioner, Nordic Group AS’s CCR application was filed eight years after the 2001 transformation of Nordic Group ASA from a publicly-held LLC to a privately-held LLC (Nordic Group AS), and more than 12 years after the zero percent deposit rate was issued to Nordic Group A/L at the end of its NSR.

Nordic Group AS disputes petitioner’s reasoning that it misused a zero percent dumping margin. It notes that petitioner does not explain how this is relevant to the CCR or any nexus or connection between Nordic Group AS’s alleged failure to abide by U.S. dumping laws and the CCR request filed by Nordic Group AS. As such, Nordic Group asserts that petitioner’s argument is irrelevant and should be rejected by the Department.

DOC POSITION: Petitioner makes the new allegation that Nordic Group A/S improperly utilized the deposit rate assigned to Nordic Group A/L to ship salmon into the U.S. market several years ago, despite the fact that Petitioner became aware that Nordic Group ASA had shipments into the United States in 2003, 2004 and in the early part of 2005 at the November 10,

2005, ITC hearing. See Petitioner’s August 26, 2009, submission at Exhibit 2. This allegation is not relevant to issue of this CCR review. While the Department is concerned with possible circumvention of the anti-dumping/countervailing duty statutes this is not a case where the issue is relevant because of the continuity of ownership from Nordic Group A/L to Nordic Group AS and that fact that it was utilizing a zero percent rate. There is no evidence on the record that Nordic Group AS was attempting to disguise or utilize a rate the company did not believe was theirs. More importantly it does not concern the primary issue in the CCR review of whether Nordic AS is or is not the successor of Nordic A/L. As stated in response to Comment 5, companies are not required to request a “successor-in-interest” CCR within a date certain. We disagree with Petitioner that the perceived delay in requesting a CCR is relevant to the Department’s ultimate conclusion that Nordic Group AS is the successor-in-interest to Nordic group A/L

Comment 7: Nordic Group AS’s Corporate History

Petitioner contends that Nordic AS failed to disclose that a majority share of Nordic Group AS recently was owned and controlled by Aker Seafoods ASA (Aker), a major publicly-traded seafood company headquartered in Norway that conducts harvesting, processing, and sales operations of various types of fish in Norway and elsewhere. Based on petitioner’s limited scope of publicly available information, it appears that in 2005, Aker acquired a controlling interest in Nordic Group AS in connection with Aker’s purchase of 65.1 percent of the shares of Nordic Sea Holding AS, an entity nowhere mentioned by Nordic Group AS in its CCR application. Nordic Sea Holding AS, in turn, owned 55 percent of Nordic Group AS’s shares. See Id. at Exhibit 8 at 13. Petitioner explains that it was unable to ascertain any additional information concerning the timing of Nordic Sea Holding AS’s acquisition of 55 percent of the shares of Nordic Group AS, a relationship not disclosed by Nordic Group AS in its CCR application. Petitioner identified additional information suggesting that Aker sold its majority share in Nordic Group AS within a year of its acquisition. Petitioner further notes that on March 3, 2006, Aker announced that it had entered a letter of intent to sell its 62.5 percent share in Nordic Group AS to Terje Korsnes and Richard Stien, who are identified in the release as “the management of Nordic Group.” See Id. at Exhibit 9.

Petitioner reiterates that this fact was not reported in Nordic Group AS’s CCR application. Petitioner argues that, at a minimum, this information demonstrates that Nordic Group AS failed to provide a complete description of its recent corporate history in its CCR application. Petitioner argues that the information concerning Aker suggests that Nordic Group AS’s characterization that it was a privately-held limited liability company between 2001 and the present is inaccurate, inasmuch as the publicly-traded Aker owned a controlling interest in Nordic Group between March 2005 and March 2006. See Id. at Exhibits 8 and 9.

Petitioners argue that Nordic Group AS may have withheld this information from the Department in order to conceal the true nature of its operations and affiliations. This information is directly relevant to the Department’s analysis of whether Nordic Group AS’s management, production facilities, supplier relationships, and customer base could be expected to change relative to those same considerations with respect to Nordic Group ASA and Nordic Group A/L.

Petitioner contends that Nordic Group AS's CCR application also fails to disclose its recent merger/acquisition of Njord Seafood, information that is featured on the current home page of Nordic Group AS's internet site. See Id. at Exhibit 4. Petitioner explains that the website states that Nordic Group AS and Njord Seafood merged into one company. Petitioner asserts that Nordic Group AS has for nearly three years been in close cooperation with Njord Seafood and that the two companies together have provided a full range of fresh fish supply from Norway, most of the time from joint offices in central Trondheim. Petitioner notes that, while the precise nature of merged entity's operations is not clear, the information demonstrates that the Nordic Group AS has failed to report a material change in its business organization and operations. Petitioner notes that a brief statement on Nordic Group AS's website suggests the merger could have altered Nordic Group AS's operations with respect to each of the four factors examined by the Department under its successor-in-interest analysis- management, production facilities, supplier relationships, and customer base.

Petitioner argues that the fact that Nordic Group AS failed to disclose this material change in its operations raises further concerns about the completeness and accuracy of its submission. As with its failure to disclose the acquisition and subsequent divestiture by Aker Seafoods, this information is directly relevant to the Department's analysis of whether Nordic Group AS's management, production facilities, supplier relationships, and customer base could be expected to change relative to those same considerations with respect to Nordic Group ASA and Nordic Group A/L.

Nordic Group AS argues that the Aker and Njord situations are not omissions in its CCR Application and furthermore the information is not relevant to the CCR. A company is not required to provide a historical dissertation but only to demonstrate that the company's management, sales operations, supplier relationships and customer base are essentially the same as those of its predecessor company. Nordic AS argues that it is important to note that Aker was only a shareholder in Nordic Group AS, which respondent argues is an indirect, passive investment. Aker's majority stock ownership of Nordic Group AS occurred as an indirect result of Aker's acquisition of Nordic Sea Holding AS ("Nordic Sea") in May 2005. See Nordic AL's September 16, 2009, submission at Exhibit 1.

Thus, Nordic Group AS argues, Aker's majority shareholding was an indirect result of Aker's purchase of Nordic Sea and that the record evidence further demonstrates that Nordic Group AS was held by Aker as a separate, independent entity of which it held a majority stock interest for only ten months. According to Mr. Korsnes, "Aker did not have any material impact on management, sales operations, supplier relationships or customer base of Nordic Group AS." See Nordic AL's September 16, 2009, submission at Exhibit 1.

Nordic Group AS argues that the record evidence demonstrates that the Aker's indirect purchase of Nordic Group AS stock and has no relevance to this proceeding. There was, according to Nordic Group AS, no reason for it to report the Aker stock purchase as it did not result in any material change in Nordic Group AS management, sales operations, supplier relationships or customer base.

Respondent further disputes petitioner's assertion that it failed "to disclose its recent merger/acquisition of Njord Seafood". According to respondent, petitioner relies on a statement that appeared in the Nordic Group AS website. See Petitioner's August 26, 2009, brief at Exhibit 4. Respondent refutes petitioner's merger theory in a sworn statement by its president, Terje Korsnes:

No merger ever occurred between Njord Seafood and Nordic Group AS, notwithstanding the references to a merger in the Nordic Group webpage appearing in Exhibit 4 of Cooke's case brief. The statement on the website is a translation from a notice written in Norwegian where the use of the Norwegian word, when translated from Norwegian into English, incorrectly indicates a merger had occurred. On December 8, 2008 Nordic Group AS hired 8 Njord Seafood employees, which caused Njord Seafood to stop trading operations in seafood products. Njord Seafood continues to exist as a separate corporation today. See Nordic AS September 16, 2009, submission at Exhibit 1.

Respondent further argues that letters from corporate counsel to Nordic Group AS and Njord Seafood AS further support the fact that no merger occurred between the two firms:

By the end of 2008 Nordic Group AS hired the employees of Njord Seafood AS, who were added to the Nordic Group AS sales and marketing staff. There was no merger between the two companies, nor did Nordic Group AS acquire any assets of Njord Seafood AS.

See Nordic AS's September 16, 2009, submission at Exhibit 3. Further, according to corporate counsel for Njord Seafood AS:

"due to rough market conditions, Njord Seafood AS gave up its business within the trade of seafood at the end of 2008. Nordic Group AS hired the employees of Njord Seafood AS. No merger or acquisition took place between the two companies. Njord Seafood is still in business."

See Nordic AS's September 16, 2009, submission at Exhibit 4. Thus, Nordic Group AS argues that, as with the Aker situation, the Njord situation is a "non-event" in the context of the instant CCR.

DOC POSITION: None of the allegations regarding Aker and Njord are relevant to the CCR review. In accordance with section 751(b) of the Act and 19 CFR 351.216, the Department will determine if there is a sufficient basis for a successor-in-interest to determination in antidumping Proceedings on the primary basis, but not limited to: (1) management; (2) production facilities; (3) supplier relationships, and (4) customer base. See, e.g., Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review, 57 FR 20460, 20462 (May 13, 1992) and Certain Cut-To-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, 70 FR 22847 (May 3, 2005) (Plate from Romania), unchanged in the Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Cut-to-Length Carbon Steel Plate from Romania, 70 FR 35624 (June 21, 2005). As stated above, we find that Nordic Group AS's CCR request meets these criteria.

Furthermore petitioner did not refute Nordic AS's explanation that Aker had only limited control of a subsidiary for less than a year and that control was relinquished prior to the POR of the instant CCR. See Nordic Group AS's September 16, 2009, Opposition Case Brief at 12 and Exhibit 1. Additionally, concerning Njord Seafood, we find petitioner's arguments unpersuasive. Petitioner's argument rests largely from statement's obtained from Nordic AS's website, statements that Nordic Group AS contends have been mistranslated by petitioner. See Nordic Group AS's September 16, 2009, Opposition Case Brief at 12 and 13 and Exhibit 1. We note that petitioner did not dispute Nordic Group AS's explanation in either its April 13, 2009, case or April 20, 2009, rebuttal briefs.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final determination of the investigation in the Federal Register.

_____ Agree

_____ Disagree

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date

