

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

Investigation Nos. 731-TA-394-A & 399-A (Second Review) (Remand)

Ball Bearings from Japan and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings.

SUMMARY: The U.S. International Trade Commission (“Commission”) hereby gives notice of its second remand proceedings with respect to its affirmative determinations in the five-year reviews of the antidumping orders on ball bearings from Japan and the United Kingdom. For further information concerning the conduct of this proceeding and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A through E (19 C.F.R. part 201), and part 207, subpart A (19 C.F.R. part 207).

EFFECTIVE DATE: October 14, 2009

FOR FURTHER INFORMATION CONTACT: James McClure, Office of Investigations, telephone 202-205-3191, or David Goldfine, Office of General Counsel, telephone 202-708-5452, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background. – In June 2006, the Commission unanimously determined that revocation of the antidumping duty orders on ball bearings from France, Germany, Italy, Japan, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonable foreseeable time. The Commission’s determinations for Japan and the United Kingdom were appealed to the Court of International Trade (the “Court”). On September 9, 2008, the Court issued a decision remanding the matter to the Commission for further proceedings. *NSK v. United States*, Slip Op. 08-95 (Ct. Int’l Trade, Sept. 9, 2008) (“*NSK I*”). In its opinion, the Court issued an order instructing the Commission to (1) “conduct a *Bratsk* analysis of non-subject imports as outlined in this opinion;” (2) “reassess supply conditions within the domestic industry,” i.e., the industry’s restructuring efforts during the period of review, and (3) “reexamine its findings with regard to likely impact and its decision to cumulate imports from the United Kingdom in light of changes in its determinations that may result as a consequence of the foregoing remand instructions.”

On October 8, 2008, in accordance with the Court's order, the Commission initiated remand proceedings in the above-captioned reviews. The notice of initiation for the remand proceeding was published in the Federal Register at 73 Fed. Reg. 63217 (Oct. 20, 2008). The Commission re-opened its record to obtain information to conduct a *Bratsk* analysis of non-subject imports as outlined in the Court's opinion. The Commission also permitted parties to file comments pertaining to the specific issues that are the subject of the Court's remand instructions and to comment on the new information obtained on remand. *Id.*

On October 9, 2008, the Commission filed a motion for reconsideration with the Court. In the motion, the Commission requested that the Court reconsider its decision in light of the Federal Circuit's decision, *Mittal Steel Point Lisas Limited v. United States*, Court No. 2007-1552 (September 18, 2008) ("*Mittal*"). In its motion, the Commission also requested that the CIT issue a stay of the remand proceeding pending the Court's disposition of the Commission's motion for reconsideration. Defendant-Intervenor The Timken Company ("*Timken*") filed a similar motion for reconsideration and a motion to stay the remand proceeding.

On October 29, 2008, the CIT granted the requests of the Commission and Timken to stay the Commission's remand proceeding pending its reconsideration of the Commission's and Timken's motions for reconsideration. Accordingly, the Commission stayed its remand proceeding on November 17, 2008 pending the Court's ruling on the motions for reconsideration. On December 29, 2008, the Court denied the motions for reconsideration by the Commission and Timken. *NSK Corp. et al. v. United States*, Slip Op. 08-145 (Dec. 29, 2008) ("*NSK II*"). Accordingly, on February 6, 2009, the Commission published a notice that it was resuming its remand proceeding. The Commission provided parties with an opportunity to file comments on the Court's remand instructions and the evidence obtained on remand, and directed that they be filed by March 23, 2009. 74 Fed. Reg. 6174.

The Commission also prepared a supplemental staff report regarding non-subject producer questionnaire information gathered in the remand proceeding. On March 23, 2009, comments on the remand were filed by petitioner The Timken Company, and the Japanese and United Kingdom respondents JTEKT Corp., Koyo Corp. of U.S.A., NSK Corporation, NSK Ltd., and NSK Europe Ltd. On May 4, 2009, the Commission issued its remand determinations in *Ball Bearings from Japan and the United Kingdom*, 731-TA-394A & 399A, (Second Review) (Remand), USITC Pub. 4082 (May 2009). By unanimous vote, the Commission again determined that revocation of the antidumping duty orders on ball bearings from France, Germany, Italy, Japan, and the United Kingdom would likely result in continuation or recurrence of material injury within a reasonably foreseeable time.

On August 31, 2009, the CIT issued an opinion in *NSK Corp. et al. v. United States*, Slip Op. 09-91 ("*NSK III*"), again remanding the Commission's affirmative determinations in *Certain Bearings and Parts Thereof from Japan and the United Kingdom*, Inv. Nos. 731-TA-394-A & 399-A (Second Review) (Remand), USITC Pub. 4082 (May 2009). In *NSK III*, the Court has remanded the same three issues which it previously remanded for further explanation in *NSK I* and *NSK II*. First, the Court remanded the Commission's analysis of non-subject imports, with

instructions to “to determine whether, in light of the significant presence of non-subject imports, the subject imports are more than a mere minimal or tangential factor in the material injury to the domestic industry that is likely to continue or recur in the absence of the antidumping duty order.” *NSK III* at 29. Second, the Court directed the Commission to “provide a more careful and reasoned explanation of (1) the large scale restructuring within the ball bearing industry and (2) the significant rise in non-subject imports in the U.S. market” as part of its cumulation analysis of the subject imports from the United Kingdom. *Id.* Third, the Court directed the Commission to “revisit its determination on the vulnerability of the domestic market and the likely impact of subject imports on the domestic market.” *Id.* at 30.

The Court has ordered the Commission to file its remand determination with the Court by January 5, 2010.

Participation in the proceeding. – Only those persons who were interested parties to the reviews (i.e., persons listed on the Commission Secretary’s service list) and parties to the appeal may participate in the remand proceeding. Such persons need not make any additional filings with the Commission to participate in the remand proceeding, unless they are adding new individuals to the list of persons entitled to receive business proprietary information under administrative protective order. Business proprietary information (“BPI”) referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the reviews.

Written submissions. – The Commission is not re-opening the record in this remand proceeding. The Commission will permit the parties to file comments pertaining to the specific issues that are the subject of the Court’s remand instructions and, in this regard, may comment on the new information obtained on remand. Comments should be limited to no more than fifteen (15) double-spaced and single-sided pages of textual material. No appendices or other attachments are allowed. The parties may not themselves submit any new factual information in their comments and may not address any issue other than those that are the subject of the Court’s remand instructions. Any such comments must be filed with the Commission no later than October 23, 2009.

All written submissions must conform with the provisions of section 201.8 of the Commission’s rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission’s rules, as amended, 67 Fed. Reg. 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 C.F.R. part 201), and part 207, subpart A (19 C.F.R. part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: October 14, 2009