

IV. Legal Basis for Issuing an Order of Default

Section 766.7 of the Regulations states that BIS may file a motion for an Order of Default if a responder fails to file a timely answer to a charging letter. That section, entitled Default, provided in pertinent part:

Failure of the respondent to file an answer within the time provided constituted a waiver of the responder's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing sanctions.

15 CFR 766.7 (2004).

Pursuant to section 766.6 of the Regulations, a respondent must file an answer to the charging letter "within 30 days after being served with notice of the issuance of the charging letter" initiated the proceeding.

V. Sanctions

Section 764.3 of the Regulations establishes the sanctions that BIS may seek for the violations charged in this proceeding. The applicable sanctions are: (i) a civil penalty; (ii) suspension from practice before the Department of Commerce; and (iii) a denial of export privileges under the Regulations. See 15 CFR 764.3 (2004).

BIS requests that I recommend to the Under Secretary of Commerce for Industry and Security ("Under Secretary")⁶ that Talyi's export privileges under the Regulations be denied for twenty (20) years and that Talyi be ordered to pay a one hundred twenty-one thousand dollar (\$121,000) civil penalty to the Department of Commerce, the maximum civil penalty allowable based on the charges in the charging letter. See Bureau of Industry and Security's Motion for Default Order, at 7-9. I agree with BIS, in that Talyi has exhibited a severe disregard and contempt for U.S. export control laws. See Exhibit 2, Talyi Plea Agreement, dated January 29, 2004; see also Exhibit 3, Talyi Judgment and Commitment Order, dated April 29, 2004. Talyi has deliberately and covertly participated in export transactions of items from the United States to the United Arab Emirates in violation of an initial TDO issued by BIS. See *id.* Talyi is currently serving a prison term resulting from his felony guilty plea to these violations of the TDO. See Exhibit 3, Talyi Judgment and Commitment Order, dated April 29, 2004. Furthermore, Talyi exported and solicited oil field parts from the United States to Libya, a country against which the United States maintained an economic embargo because of Libya's support for international terrorism, when Talyi knew the required U.S. government authorization

would not be obtained. See Exhibit 7, BIS Charging Letter, dated June 22, 2004.

BIS has also established that Talyi failed to enter into a settlement agreement consistent with that to which Talyi previously agreed in his criminal plea agreement, but has refused to engage in any good faith settlement negotiations with BIS concerning the case. See Exhibit 2, Talyi Plea Agreement, dated January 29, 2004; see also Exhibit 3, Talyi Judgment and Commitment Order, dated April 29, 2004; Exhibits 5 and 6, EIS Letters to Frank DeSalvo, dated May 25, 2004, and June 16, 2004. In light of the above, through his illegal actions Talyi has demonstrated that this is the kind of case for which a lengthy denial order and the maximum civil penalty are necessary because Talyi simply cannot be trusted to comply with U.S. export control laws. See *id.*

Based on the foregoing, I concur with BIS and recommend that the Under Secretary enter an Order denying Talyi's export privileges for a period of twenty (20) years and assess a twenty-one thousand dollar (\$121,000) civil penalty against Talyi. Such a denial order and civil penalty are consistent with penalties imposed in recent cases under the Regulations involving illegal exports to Iran, a country that is subject to a similar embargo as that which had applied to Libya during the relevant time period. See *In the Matter of Jabal Damavand General Trading Company*, 67 FR 32009 (May 13, 2002) (affirming the ALJ's recommendations that a ten year denial was appropriate where violations involved shipments of EAR99 items to Iran); *In the Matter of Abdulamir Mahdi*, 68 FR 57406 (October 3, 2003) (affirming the ALJ's recommendations that a twenty (20) year denial was appropriate where violations involved shipments of oil field equipment to Iran as part of a conspiracy to ship items through Canada to Iran).

The recommended penalties are also consistent with settlements reached in significant BIS cases under the Regulations concerning illegal exports of pipe coating materials to Libya. See *In the Matter of Jerry Vernon Ford*, 67 FR 7352 (Tuesday, February 19, 2002) (settlement agreement for a twenty-five (25) year denial); and *In the Matter of Thane-Coat, Inc.*, 67 FR 7351 (Tuesday, February 19, 2002) (settlement agreement for a civil penalty of one million, one hundred twenty thousand dollars (\$1,120,000) (five hundred twenty thousand dollars (\$520,000) suspended for two years and a twenty-five (25) year denial).

[Portions Redacted]

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary for review and final action for the agency, without further notice to the Respondent, as provided in Section 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. See 15 CFR 766.22(c).

Done and dated this 18 of November, at Baltimore, MD.

Joseph N. Ingolia,
Chief Administrative Law Judge.

CERTIFICATE OF SERVICE

I hereby certify that I served the *Decision and Order on Motion for Default Order* by Federal Express to the following person: Frank G. DeSalvo, Esq., 201 South Galvez St., New Orleans, LA 70119.

Done and dated this 18 day of November 2004 Baltimore, Maryland.

Alyssa L. Paladino,
Law Clerk, ALJ Docketing Center, United States Coast Guard, 40 S. Gay Street, Room 412, Baltimore, MD 21202. Phone: (410) 962-7434. Facsimile: (410) 962-1742.

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: December 27, 2004.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2004), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. The Department also received a timely request to revoke in part the

⁶Pursuant to section 13(c)(1) of the Act and section 766.17(b)(2) of the Regulations, in export control enforcement cases, the ALJ issues a recommended decision and order which is reviewed by the Under Secretary, who issues the final decision for the agency.

antidumping duty order on Certain Hot-Rolled Carbon Steel Flat Products from Thailand.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following

antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 2005.

Antidumping duty proceedings	Period to be reviewed
Mexico:	
Carbon and Certain Alloy Steel Wire Rod, A-201-830	10/1/03—9/30/04
Siderurgica Lazaro Cardenas las Truchas S.A. ¹	
Circular Welded Non-alloy Steel Pipe, A-201-805	11/1/03—10/31/04
Hylsa, S.A. de C.V.	
Niples Del Norte, S.A. de C.V.	
Netherlands: Certain Hot-Rolled Carbon Steel Flat Products, A-421-807	11/1/03—10/31/04
Corus Staal B.V.	
Romania: Certain Hot-Rolled Carbon Steel Flat Products, A-485-806	11/1/03—10/31/04
S.C. Ispat Sidex S.A., aka Sidex S.A.	
Sidex Trading S.r.l.	
Metalexportimport, S.A.	
Thailand: Certain Hot-Rolled Carbon Steel Flat Products, A-549-817	11/1/03—10/31/04
Nakornthai Strip Mill Public Co., Ltd.	
Sahaviriya Steel Industries Public Co., Ltd.	
Siam Strip Mill Public Co., Ltd.	
The People's Republic of China:	
Certain Cut-to-Length Carbon Steel Plate ² , A-570-849	11/3/03—10/31/04
Beijing Shougang Xingang Co., Ltd.	
Beijing Alliance of Xingang Science and Trade Co., Ltd.	
Fresh Garlic*, A-570-831	11/1/03—10/31/04
Clipper Manufacturing Ltd.	
Jinxiang Dong Yun Freezing Storage Co., Ltd.	
Fook Huat Tong Kee Pte., Ltd. (FHTK)	
Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong	
Heze International Trade and Developing Company)	
H&T Trading Company	
Huaiyang Hongda Dehydrated Vegetable Company	
Jinxiang Shanyang Freezing Storage Co., Ltd.	
Jinxiang Hongyu Freezing and Storing Co., Ltd.	
Jinan Yipin Corporation, Ltd.	
Jining Yun Feng Agriculture Products Co., Ltd.	
Linshu Dading Private Agricultural Products Co., Ltd.	
Linyi Sanshan Import & Export Trading Co., Ltd.	
Pizhou Guangda Import and Export Co., Ltd.	
Shandong Jining Jinshan Textile Co., Ltd.	
Shanghai Ever Rich Trade Company	
Shanghai LJ International Trading Co., Ltd.	
Sunny Import & Export Co., Ltd.	
Taiyan Ziyang Food Co., Ltd.	
Tancheng County Dexing Foods Co., Ltd.	
Weifang Shennong Foodstuff Co., Ltd.	
Jining Trans-High Trading Co., Ltd.	
Xiangcheng Yisheng Foodstuffs Co.	
Zhengzhou Harmoni Spice Co., Ltd.	

¹ Company inadvertently omitted from previous initiation notice.

² If one of the above-named companies does not qualify for a separate rate, all other exporters of certain cut-to-length carbon steel plate from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

* If one of the above-named companies does not qualify for a separate rate, all other exporters of fresh garlic from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a

determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v. United States*, 291 F.3d 806 (Fed. Cir. 202), as appropriate, whether antidumping duties have been absorbed

by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: December 16, 2004.

Holly A. Kuga,

Senior Office Director, Office 4 for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

(A-588-811)

Drafting Machines and Parts Thereof from Japan: Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 1, 2004, the Department of Commerce ("the Department") initiated a second sunset review of the antidumping duty order on drafting machines and parts thereof from Japan. *See Initiation of Five-year ("Sunset") Reviews*, 69 FR 58890 (October 1, 2004). However, on October 27, 2004, the only domestic interested party, Vemco Drafting Products Corporation ("Vemco"), withdrew its interest in this proceeding. Therefore, the Department is revoking the antidumping duty order on drafting machines and parts thereof from Japan.

EFFECTIVE DATE: November 24, 2004

FOR FURTHER INFORMATION CONTACT:

Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5050.

SUPPLEMENTARY INFORMATION:

Scope

The scope of this order includes drafting machines that are finished, unfinished, assembled, or unassembled, and drafting machine kits. For purposes of this sunset review, "drafting machine" refers to "track" or "elbow-type" drafting machines used by designers, engineers, architects, layout artists, and others. Drafting machines are devices for aligning scales (or rulers) at a variety of angles anywhere on a drawing surface, generally a drafting board. A protractor head allows angles to be read and set and lines to be drawn. The machine is generally clamped to the board. Also included within the scope of this order are parts of drafting

machines. Parts include, but are not limited to, horizontal and vertical tracks, parts of horizontal and vertical tracks, band and pulley mechanisms, protractor heads, and parts of protractor heads, destined for use in drafting machines. Accessories, such as parallel rulers, lamps and scales are not subject to this investigation. This merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") item 9017.10.00 and 9017.90.00. (This merchandise was previously classified under HTSUS item 710.8025.) Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

Background

On December 29, 1989, the Department issued an antidumping duty order on drafting machines and parts thereof from Japan. *See Antidumping Duty Order: Drafting Machines and Parts Thereof from Japan*, 54 FR 53671 (December 29, 1989). Following the first sunset review of the order, pursuant to 19 CFR 351.218(f)(4), the Department published a notice of continuation in the **Federal Register**. *See Continuation of Antidumping Duty Order: Drafting Machines and Parts Thereof From Japan*, 64 FR 66166 (November 24, 1999).

On October 1, 2004, the Department initiated a second sunset review of the order pursuant to section 751(c) of the Tariff Act of 1930, as amended, ("the Act"), and 19 CFR part 351, in general. *See Initiation of Five-year ("Sunset") Review*, 69 FR 58890 (October 1, 2004). As a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of a sunset review.

On October 18, 2004, within the applicable deadline, the Department received a Notice of Intent to Participate from Vemco, the only domestic interested party in this proceeding. *See* 19 CFR 351.218(d)(1)(i). On October 27, 2004, the Department received a response from the sole producer or exporter, Mutoh Industries Ltd. ("Mutoh"), indicating that it would not participate in the sunset review on drafting machines and parts thereof from Japan because Mutoh was not an interested party within the meaning of section 771(9)(A) of the Act.

On November 3, 2004, Vemco withdrew its Notice of Intent to Participate and withdrew its interest in maintaining the antidumping duty order

on drafting machines and parts thereof from Japan. Because Vemco (the only domestic interested party in the sunset proceeding) withdrew its interest in this sunset proceeding, the Department has determined to treat this situation as if no domestic interested party responded to the notice of initiation. Therefore, the Department is revoking the antidumping duty orders on drafting machines and parts thereof from Japan.

Determination to Revoke

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested parties respond to the notice of initiation, the Department shall make a final determination no later than 90 days after the initiation of the sunset review, revoking the order.

Because the only domestic interested party withdrew its interest in this sunset review (*see* 19 CFR 351.218(d)(1)(i) and 351.218(e)(1)(i)(C)(1)), consistent with the provision of section 751(c)(3)(A) of the Act, we are revoking the antidumping duty order on drafting machines and parts thereof from Japan.

Effective Date of Revocation

Pursuant to sections 751(c)(3)(A) and 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the Department will instruct U.S. Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after November 24, 2004, the fifth anniversary of the date of the determination to continue the order. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 751(d)(2), and 777(i)(1) of the Act.

Dated: December 17, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

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