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FOUNDED 1866

August 15, 2006

Ms. Claudia Bridgeford
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington D.C. 20510

Re: S.3431

Dear Ms. Bridgeford:

On behalf of TKS (U.S.A.), Inc. and Tokyo Kikai Seisakusho, Ltd. (TKS) we are submitting the following comments regarding S. 3431 which being considered by the Committee for inclusion in the Miscellaneous Trade Bill (MTB).

S. 3431 would require Customs and Border Protection (Customs) to reliquidate entries of large newspaper printing presses from Japan that entered during the period September 1, 1997, through August 31, 1998, and to impose a 59.67 percent antidumping duty on those entries in accordance with a decision issued by the Commerce Department on March 8, 2006, in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Review*, 71 Fed. Reg. 11590 (March 8, 2006). This bill should not be included in the MTB, because the issue of antidumping duty liability on these entries is currently being contested in the Court of International Trade and is under review by Customs.

On March 16, 2006, TKS filed suit in the Court of International Trade to contest the Commerce Department's decision. (*Tokyo Kikai Seisakusho, Ltd. et. al. v. United States*, Ct. No. 06-00078.) The lawsuit challenges Commerce's authority to conduct the changed circumstances review and to impose the 59.67 percent antidumping duty on the entries that are the subject of S. 3431. Customs is also considering whether TKS may be liable for antidumping duties on those entries.

The MTB process is intended to provide a means for suspending or reducing duties on matters that are not controversial. S. 3431 improperly seeks to utilize this process to intervene in an ongoing dispute that is before the Court of International Trade and Customs. Even more intrusively, S. 3431 would do so in a manner that entirely extinguishes the rights of the parties to challenge the validity of the agencies' decisions. This would be a highly unusual step for

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Congress to take, and certainly is not the sort of non-controversial tariff matter intended for the MTB process. We therefore respectfully submit that this measure should not be included in the MTB.

Sincerely,



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August 15, 2006

VIA EMAIL

The Honorable Charles Grassley, Chairman
The Honorable Max Baucus, Ranking Member
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, D.C. 20510

**Re: Comments on Miscellaneous Tariff Bills; Support for S. 3431
(Durbin)**

Dear Chairman Grassley and Senator Baucus:

On behalf of Goss International Corporation (“Goss”), a U.S. producer of large newspaper printing presses with facilities in Illinois, New Hampshire, and Texas, we write in support of S. 3431, introduced by Sen. Richard Durbin. This bill would require the Bureau of Customs and Border Protection (“Customs”) to collect certain antidumping duties owed on entries of large newspaper printing presses imported from Japan by Tokyo Kikai Seisakusho, Ltd. (“TKS”). The Department of Commerce originally mistakenly ordered these entries to be liquidated at a zero antidumping duty, due to fraud committed by TKS.

Specifically, the Department of Commerce recently found that TKS fraudulently concealed evidence that these imports were entered at dumped prices when there was an antidumping order in effect, and the Department recalculated the duty for the 1997-1998 period, determining that the imports should have been dutied at 59.67 per cent *ad valorem*, and *not zero*.¹ The Department of Commerce notified Customs of this decision and the correct rate of duty, stating:

{T}he antidumping duty rate applicable to entries of LNPPS from Tokyo Kikai Seisakusho, Ltd. (TKS) during the period September 1, 1997 through August 31, 1998 should have been 59.67 percent as opposed to zero. We are informing you of this decision in order for

¹ *Large Newspaper Printing Presses from Japan*, 71 Fed. Reg. 11,590 (Dep’t of Commerce Mar. 8, 2006) (final results of changed circumstances review).

you to take any action you deem appropriate in accordance with your statutory authority.²

To date, Customs has not moved to rectify the mistake, and to reliquidate the entries at 59.67 percent. Therefore, this bill is necessary in order to ensure that the serious harm suffered by the U.S. industry and its workers is at least partially redressed.

By way of background, in 1996, the U.S. industry producing large newspaper printing presses filed a successful antidumping case against imports of presses from Germany and Japan. Despite the success of the case, dumping continued, leading to the bankruptcy of Goss Graphic Systems, Inc. (whose assets Goss later acquired), the closure of Goss Graphic's manufacturing plant in Cedar Rapids, Iowa and the loss of hundreds of jobs in Iowa and Illinois. TKS did not pay any duties on its imports after the initial order went into effect, because the Department of Commerce determined in administrative reviews that TKS did not dump during that period. However, evidence was revealed in a separate federal district court case that TKS engaged in a scheme to conceal its dumping and avoid the payment of antidumping duties, using a secret rebate, a fraudulent price increase, and destruction of documents. These findings have been upheld by the Eighth Circuit Court of Appeals.³ The Supreme Court has denied certiorari in the case.

In 2005, the Department of Commerce self-initiated an investigation based on the results of the federal litigation, and concluded its investigation in March of this year. The sale examined by the federal court, which found that TKS concealed a secret rebate, created false invoices, and destroyed documents, was the same sale scrutinized by the Department in the first administrative review of the antidumping order. "Evidence was presented in that court proceeding demonstrating that TKS intentionally provided false information regarding its sale to the Dallas Morning News (DMN), the subject of the Department's 1997-1998 administrative review."⁴

In its final determination, the Department found that TKS engaged in "a uniquely egregious display of misconduct . . . deliberately embark{ing} on a campaign to withhold and misrepresent material information specifically requested by the Department in the conduct of an antidumping duty proceeding." The

² Letter from Irene Darzenta Tzafolias to William R. Scopa & Cathy Saucedo, re: *Changed Circumstances Review of Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan* (Mar. 30, 2006).

³ *See Goss Int'l Corp. v. Tokyo Kikai Seisakusho, Ltd.*, 321 F. Supp. 2d 1039, 1045-46 (N.D. Iowa 2004), *aff'd by Goss Int'l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft*, 434 F.3d 1081 (8th Cir. 2006).

⁴ *Large Newspaper Printing Presses from Japan*, 71 Fed. Reg. 11,590 (Dep't of Commerce Mar. 8, 2006) (final results of changed circumstances review).

Department concluded that TKS' actions defrauded the agency, and led to an improper zero margin in the administrative review for the period 1997-1998.⁵

Quoting the federal court proceedings, the Department stated:

The jury further heard evidence at trial that TKS agreed to a fraudulent price increase and secret \$ 2.2 million rebate to keep the DMN [Dallas Morning News] from purchasing the two towers from Goss in 1996. . . . The jury was also presented with evidence that TKS and its counsel engaged in a concerted effort to conceal the secret rebates. Mr. Saito warned that putting the rebate in writing would be "incriminating" and that it should therefore be a verbal or "handshake deal." (PX 200). . . . Mr. Saito urged TKS (USA) to falsify its business records, stating that "TKS U.S.A.'s business records should carefully reflect that the DIPs were transferred to DMN as an inducement for DMN's future purchase of presses from TKS." (PX 197). There was also evidence presented at trial that TKS and its counsel attempted to destroy documents to conceal the secret rebates. . . . When TKS employees committed the secret rebate agreement with the DMN to a signed, written agreement, TKS executives Mr. Morimoto and Takehiro Fukuyama stated that "there should not be such a document" and ordered that copies of the document "must be collected and destroyed." (PX 84, 86). Mr. Morimoto likewise instructed the DMN to destroy a memorandum documenting the secret rebate: "destroy this fax letter after you read it." (PX 154).⁶

Quoting the United States Court of Appeals for the Eighth Circuit, the Department stated:

TKS attempted to cover up its dumping practices. Specifically, Goss presented evidence to the jury that TKS (1) knew it faced dumping problems because of its conduct; (2) made secret rebate deals with newspapers to conceal dumping issues; (3) tried to destroy or conceal evidence of its dumping practices; and (4) sought to avoid written agreements when trying to skirt antidumping laws. When this conduct is viewed in light of the evidence listed above, the jury reasonably could have concluded

⁵ See Memorandum from Stephen J. Claeys, Deputy Assistant Sec'y for Import Admin., to David M. Spooner, Assistant Sec'y for Import Admin., re: *Issues and Decision Memorandum for the Changed Circumstances Review of Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan* (Mar. 8, 2006) at 11 ("Decision Memo").

⁶ Decision Memo at 11-12.

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TKS knew it was engaging in unlawful conduct, but nevertheless continued to violate the antidumping laws in its desire to injure or destroy its enemy – Goss.⁷

The dumping and the fraud by the Japanese producer TKS caused substantial financial harm to Goss Graphic Systems and its employees. TKS' fraudulent activity resulted in Goss Graphic Systems' bankruptcy and subsequent reorganization, the closure of a major factory in Iowa with a proud history for over a century serving the commercial printing market, and the loss of hundreds of U.S. manufacturing jobs in Iowa and Illinois. In 2002, the assets of Goss Graphic Systems were acquired by Goss International. In 2004, Goss acquired manufacturing facilities in New Hampshire and Texas previously used by others to produce large newspaper printing presses. Goss is a U.S. producer of large newspaper printing presses and is committed to the U.S. market. As a member of the domestic industry, Goss is entitled to the fair enforcement of U.S. trade laws.

The facts are clear and undisputed: An antidumping order was in effect. TKS violated that order by dumping its presses in the U.S. market at less than fair value, but committed fraud in the Department of Commerce proceeding to cover up its dumping and to deliberately mislead the Department. The Department of Commerce has recently determined that the correct rate of duty on these imports is 59.67 percent, not zero, and has notified Customs of the error. S. 3431 will remedy some of the harm caused by TKS' egregious fraud, and will ensure that the correct dumping duties determined by the Department of Commerce are actually collected on these imports.

Respectfully submitted,



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⁷ Decision Memo at 12.