

final judgement vacating the United States International Trade Commission's ("ITC" or "Commission") determination finding that an industry in the United States is materially injured by reason of imports of the subject merchandise in the investigation of *Tin and Chromium-Coated Steel Sheet From Japan*. Inv. No. 731-TA-860, USITC Pub. 3300, 65 Fed. Reg. 50005 (August 16, 2000). The Court ordered the Commission to enter a negative determination. *Nippon Steel Corporation, et al. v. United States*, Slip Op. 02-86 (CIT August 9, 2002) ("*Nippon I*"). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), the Department is notifying the public that *Nippon II* is "not in harmony" with the Commission's affirmative injury determination.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 26, 2000, the Department published in the **Federal Register** the notice of final determination of sales at less than fair value on certain tin mill products from Japan. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Tin Mill Products From Japan*, 65 FR 39364 (June 26, 2000). On August 28, 2000, following the Commission's final affirmative injury determination, the Department published in the **Federal Register** the antidumping duty order on certain tin mill products from Japan. See *Notice of Antidumping Duty Order: Certain Tin Mill Products from Japan*, 65 FR 52067 (August 28, 2000).

Nippon Steel Corporation, NKK Corporation, Kawasaki Steel Corporation, and Toyo Kohan Co., Ltd., respondents in the underlying investigation, filed a lawsuit with the CIT contesting the ITC's affirmative injury determination. The Court issued an Order and Opinion dated December 31, 2000, in *Nippon Steel Corporation, et al. v. United States*, 182 F. Supp. 2d 1330 (CIT 2000) ("*Nippon I*"), remanding the ITC's affirmative injury determination. On March 4, 2002, the ITC filed its affirmative injury remand determination. USITC Pub. 3493 (March 2002). On August 9, 2002, the CIT issued an opinion and judgement vacating the Commission's affirmative injury remand determination and directing the Commission to enter a negative determination. See *Nippon II*.

##### Timken Notice

In its decision in *Timken*, the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(c), an agency must publish notice

of a decision of the CIT or Federal Circuit which is "not in harmony" with the agency's determination. The CIT's decision in *Nippon II* is not in harmony with the Commission's final affirmative injury determination. Therefore, publication of this notice fulfills the obligation imposed by the decision in *Timken*. If this decision is not appealed, or if appealed, if it is upheld, the Commission will publish notice of a negative injury determination on tin and chromium-coated steel sheet from Japan.

Dated: September 6, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-122-815]

#### **Alloy Magnesium From Canada; Extension of Time Limit for the Preliminary Results of the Countervailing Duty New Shipper Review and Pure Magnesium From Canada; Rescission of Countervailing Duty New Shipper Review**

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

**ACTION:** Notice of extension of time for preliminary results of new shipper review and rescission of new shipper review.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results of the new shipper review of the countervailing duty order on alloy magnesium from Canada. This extension of time limit is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

We are also rescinding the new shipper review of the countervailing duty order on pure magnesium from Canada.

**EFFECTIVE DATE:** September 13, 2002.

**FOR FURTHER INFORMATION CONTACT:** Sally Hastings, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3464.

#### **Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to

the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations are to 19 CFR part 351 (2001).

#### **Background**

On February 28, 2002, the Department received a request from Magnola Metallurgy, Inc. ("Magnola") to initiate a new shipper review of Magnola's sales of alloy magnesium from Canada. The Department erroneously initiated new shipper reviews of the countervailing duty orders on both pure and alloy magnesium from Canada on March 27, 2002. See *Notice of Initiation of New Shipper Countervailing Duty Review: Pure and Alloy Magnesium from Canada*, 67 FR 15794 (April 3, 2002). Because no review was requested for the former, we are rescinding the new shipper countervailing duty review on pure magnesium.

On August 9, 2002, U.S. Magnesium LLC ("U.S. Magnesium"), the successor to the Magnesium Corporation of America, the petitioner in the original investigation, requested that the Department include in this review an alleged labor subsidy not previously investigated. U.S. Magnesium filed additional comments on August 30, 2002. Magnola has objected to reconsideration of the petitioner's allegation in submissions dated August 19 and September 3, 2002.

#### **Statutory Time Limits**

Section 751(a)(2)(B)(iv) of the Act requires the Department to issue the preliminary determination in a new shipper review 180 days after the date the review was initiated and a final determination within 90 days after the date on which the preliminary results is issued. However, if the Department determines that the review is extraordinarily complicated, the Department can extend the 180-day period to 300 days and the 90-day period to 150 days.

#### **Postponement**

Because additional time is needed to review the new subsidy allegation, and if warranted, to investigate the subsidy, the Department has concluded that the case is extraordinarily complicated. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), we are postponing the preliminary results of this new shipper review for 120 days, until no later than January 21, 2003.

### Rescission of Countervailing Duty New Shipper Review on Pure Magnesium

Because Magnola's request for a new shipper review covered only the order on alloy magnesium, the Department is rescinding the new shipper review of the countervailing duty order on pure magnesium from Canada.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: September 9, 2002.

**Richard W. Moreland,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 082202C]

#### Endangered and Threatened Species; Take of Anadromous Fish

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of final determination and discussion of underlying biological analysis.

**SUMMARY:** Notice is hereby given that NMFS has evaluated the Tribal Resource Management Plan (Tribal Plan) submitted by the Northwest Indian Fisheries Commission (NWIFC), Portland, OR for tribal research and assessment activities pursuant to the protective regulations promulgated for Hood Canal summer-run chum salmon under the Endangered Species Act (ESA). The Tribal Plan specifies the future scientific research and assessment activities that potentially affect listed Hood Canal summer-run chum salmon. This document serves to notify the public that NMFS, by delegated authority from the Secretary of Commerce, has determined that implementing and enforcing the Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the Hood Canal summer-run chum salmon Evolutionarily Significant Unit (ESU). This document also includes a summary of the underlying biological analysis used in the determination (Evaluation).

**DATES:** The determination of the take limit was made on July 31, 2002.

**ADDRESSES:** Protected Resources Division, F/NW03, 525 NE Oregon Street, Suite 500, Portland, OR 97232-

2737. Copies of the Evaluation are available on the Internet at <http://www.nwr.noaa.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Leslie Schaeffer (503-230-5433, fax: 503-230-5435, e-mail: [leslie.schaeffer@noaa.gov](mailto:leslie.schaeffer@noaa.gov)).

**SUPPLEMENTARY INFORMATION:** This notice is relevant to the Hood Canal summer-run chum salmon (*Oncorhynchus keta*) ESU.

#### Background

The NWIFC submitted a Tribal Plan in cooperation with the Puget Sound Indian Tribes for scientific research and assessment activities within the range of the Hood Canal summer-run chum salmon ESU in the state of Washington. The activities are intended to provide the technical basis for fisheries management and for the conservation and restoration of salmon stocks and their habitat. The Tribal Plan also includes implementation, monitoring, evaluation, enforcement, and reporting procedures designed to ensure the research is consistent with these objectives. The research activities described in the Tribal Plan span a 5 year period beginning on January 1, 2002.

On May 16, 2002, at 67 FR 34907, NMFS published a notice of availability for public review and comment on its Evaluation of how the Tribal Plan addressed the factors in 50 CFR 223.209 (65 FR 42481, July 10, 2000) of the ESA Tribal Plan Limit.

As required by section 223.209 of the ESA Tribal Plan Limit, NMFS must determine whether the Tribal Plan would appreciably reduce the likelihood of survival and recovery of the Hood Canal summer-run chum salmon and other affected threatened ESUs. NMFS must take comments on how the Tribal Plan addresses the factors in section 223.209 in making that determination.

#### Discussion of the Biological Analysis Underlying the Determination

The Tribal Plan describes tribal research and assessment activities that provide the technical basis for fisheries management and for the conservation and restoration of salmon stocks and their habitat in the Puget Sound area. The need for improved and more quantitative understanding of salmonid freshwater and marine survival motivates much of the current research. Many of the activities are also intended to provide information for the planning, implementation, and monitoring of habitat protection and restoration efforts. Tribal resource management

entities cooperate with the Washington Department of Fish and Wildlife and other state and local agencies in many research activities. The Tribal Plan describes only those activities that are principally funded through, and managed by, tribal agencies.

The Tribal Plan is organized into four sections: (1) Spawning escapement surveys, (2) smolt production studies, (3) life history studies, and (4) habitat assessment and monitoring studies. Each section further describes the significance of the research and assessment activities and the sampling methods proposed.

It is NMFS' determination that the research and assessment activities included in the Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild based on the current status of this ESU. This research-related take is not expected to reach a level that will significantly affect any single chum population in the ESU.

The Tribal Plan contains a section describing a protocol for assuring that the level and extent of take associated with the activities do not reduce the likelihood of survival and recovery of this ESU. The Tribal Plan states that monitoring of take during the course of each activity will determine whether take and mortality are occurring at a level greater than the expected level. The Tribal Plan contains procedures whereby the overall impact of research and assessment activities can be regularly evaluated. Sampling methods and schedules will be altered as necessary to minimize take. Annual reports will include the actual take associated with each activity. NMFS will be informed when take exceeds the projected level for any activity and will be consulted regarding subsequent changes in methodology.

NMFS' Evaluation contains reporting requirements, a modification process should the tribes propose new or modified research, and a reevaluation process the tribes will follow to have the Tribal Plan Limit apply. This information will be used by NMFS and the tribes at least annually or as needed to assess whether impacts to listed fish are as expected, and to revise the Tribal Plan as necessary.

#### Summary of Comments Received in Response to the Proposed Evaluation and Recommended Determination

NMFS published notification of its evaluation and pending determination on the Tribal Plan for public review and comment on May 16, 2002 (67 FR 34907). The public comment period closed on June 17, 2002. NMFS received