

limited to localized and temporary displacement (Level B harassment). The taking by harassment is not expected to result in an unmitigable adverse impact on the availability of such species for taking for subsistence uses.

Endangered Species Act (ESA)

For the reasons already described in this **Federal Register** notice, NMFS has determined that the described proposed construction activities and the accompanying IHA are not anticipated to have the potential to adversely affect species under NMFS jurisdiction and protected by the ESA. Consequently, NMFS has determined that a Section 7 consultation is not required. The northern fur seal, which is the only species of marine mammal under NMFS jurisdiction likely to occur in the action area, is not listed under the ESA.

National Environmental Policy Act (NEPA)

NMFS has prepared an Environmental Assessment for Issuance of an Incidental Harassment Authorization for Replacement and Repair of Northern Fur Seal Observation Towers and Walkways on St. Paul Island, Alaska (EA), which analyzes the direct, indirect and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. Based on the analysis contained in the EA, NMFS has issued a Finding of No Significant Impact (FONSI) for the issuance of the IHA.

Determinations

Based on NMFS AKR's application, as well as the analysis contained herein, NMFS has determined that the impact of the described replacement and repair operations will result, at most, in a temporary modification in behavior by small numbers of northern fur seals. The effect of the construction activities is expected to be limited to short-term and localized behavioral changes.

Due to the infrequency, short time-frame, and localized nature of these activities, the number of marine mammals, relative to the population size, potentially taken by harassment is expected to be small. In addition, no take by injury (Level A harassment), serious injury, and/or death is anticipated or authorized, and take by Level B harassment will be at the lowest level practicable due to incorporation of the monitoring and mitigation measures mentioned previously in this document. NMFS has further determined that the anticipated takes will have a negligible impact on the affected species or stock of marine mammals. Also, the

construction project is not expected to result in an unmitigable adverse impact on subsistence uses of this species.

Authorization

As a result of these determinations, NMFS issued an IHA to NMFS AKR for the harassment of small numbers (based on populations of the species and stock) of northern fur seals incidental to construction operations on St. Paul Island, including the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: April 16, 2010.

James H. Lecky,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-849]

Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Initiation of Antidumping Circumvention Inquiry

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

Effective Date: April 23, 2010.

SUMMARY: In response to a request from ArcelorMittal USA, Inc.; Nucor Corporation; SSAB N.A.D., Evraz Claymont Steel and Evraz Oregon Steel Mills (collectively "Domestic Producers"), the Department of Commerce ("Department") is initiating an antidumping circumvention inquiry, pursuant to section 781(c) of the Tariff Act of 1930, as amended (the "Act"), to determine whether certain imports of certain cut-to-length carbon steel plate ("CTL plate") are circumventing the antidumping duty order on CTL plate from the People's Republic of China ("PRC"). *See Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China; Termination of Suspension Agreement and Notice of Antidumping Duty Order*, 68 FR 60081 (October 21, 2003) ("Order").

FOR FURTHER INFORMATION CONTACT: Rebecca Pandolph or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482-3627 or (202) 482-5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 17, 2010, Domestic Producers requested that the Department make a final circumvention ruling within 45 days pursuant to 19 CFR 351.225(c)(2) and (d) with respect to CTL plate produced by Wuyang Iron and Steel Co., Ltd. ("Wuyang"), regardless of the exporter or importer, or imported by Stemcor USA Inc. ("Stemcor"), regardless of the producer or exporter, which contain 0.0008 percent or more, by weight, of boron.

Domestic Producers maintain that such plates are circumventing the Order on CTL plate from the PRC because of minor alterations thereto. *See* 781(c) of the Act; see also Letter from Domestic Producers regarding, "Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Request for Circumvention Ruling," dated February 17, 2010 ("Domestic Producers' Request"). As evidence, Domestic Producers submitted a mill test certificate from Wuyang for ASTM A830 steel plate and a letter from a non-petitioning U.S. steel producer, stating that Stemcor was importing steel plate from PRC producers containing small amounts of boron resulting in the classification of the plate as "alloy" steel plate and, thus, circumventing the Order. *See id.* at 7-8 and Exhibits 1 and 2.

Domestic Producers note that the Department has made a previous ruling that CTL plate produced by Tianjin Iron and Steel Co., Ltd. and/or imported by Toyota Tsusho America with small amounts of boron added, but otherwise fitting the description of subject CTL plate, are circumventing the Order on CTL plate from the PRC. *See id.* at 9; *see also*, *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 74 FR 40565 (August 12, 2009). Moreover, Domestic Producers argue that there is an incentive for PRC producers to add insignificant amounts of boron to their steel products for the purpose of securing a higher export rebate, which further confirms the evidence that circumvention is occurring. *See* Domestic Producers' Request at 8 and Exhibit 4; *see also*, Letter from Domestic Producers, regarding "Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Clarification of Request for Circumvention Ruling," dated March 23, 2010 ("Domestic Producers' Response") at 8-9 and Exhibit 4. Furthermore, Domestic Producers note that Wuyang's production and export of CTL plate with

boron follows the imposition of the *Order* on CTL plate from the PRC and occurs as the PRC government changed its own tariff system to favor exporters' shift from exporting non-alloy steel products to alloy steel products. *See* Domestic Producers' Request at 18.

On March 10, 2010, the Department identified various issues in the Domestic Producers' Request that required clarification. On March 18, and March 23, 2010, Domestic Producers submitted their responses. In their responses, Domestic Producers clarified that the ASTM A830 specification is not for alloy steels, but for carbon and manganese carbon steels. *See* Domestic Producers' Response at 4. Domestic Producers further assert that the submitted mill test certificate presented none of the characteristics that would be expected for steel to which boron has been added for hardenability. *See id.* at 5–7 and Exhibits 1 and 3.

On March 23, and March 26, 2010, Stemcor submitted comments on Domestic Producers' Request and responses to the Department's March 10, 2010, request for clarification. In its March 23, 2010, comments, Stemcor asserts that, contrary to Domestic Producers' allegation, it is not involved in circumventing the *Order* on CTL plate from the PRC. *See* letter from Stemcor regarding, "Certain Cut-to-Length Steel Plate from the People's Republic of China: Initial Comments on Request for Circumvention Ruling, dated March 23, 2010 at 2. Moreover, Stemcor claims that the facts of this case are distinct from the previous circumvention ruling. *See id.* at 3. Specifically, Stemcor notes that boron is not mentioned in the ASTM A36 specification, the specification of CTL plate which was examined in the previous circumvention ruling, whereas the CTL plate it imports is made to the ASTM A830 specification, which explicitly mentions boron. *See id.* at 3–4. In its March 26, 2010, comments, Stemcor asserts that boron is included in the ASTM A830 plate that it imports because boron imparts certain desirable physical properties, which enhances the wearability of the steel. *See* letter from Stemcor regarding, "Certain Cut-to-Length Steel Plate from the People's Republic of China: Further Comments on Request for Circumvention Ruling, dated March 26, 2010 at 2–3. Stemcor further asserts that the ASTM A830 plate meets its customers' requirements with regard to wear characteristics of steel. *See id.* at 7–8. Moreover, Stemcor asserts that the ASTM A830 steel plate is used for making metal molds for the automotive industry, and not for structural steel as Domestic Producers

allege. *See id.* at 9–10. Stemcor also notes that the Domestic Producers' allegation concerning the role of the PRC government's rebate program for exports of alloy steel is wrong because the timing of the rebate program does not match the timing of Stemcor's imports of alloy steel plates. *See id.* at 12. The Department intends to explore the issues raised in Stemcor's comments after initiation.

Scope of the Order

The products covered by the order include hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in the order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") - for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States ("HTS") under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. Specifically excluded from subject merchandise within the scope of the order is grade X-70 steel plate.

Merchandise Subject to the Minor Alterations Antidumping Circumvention Inquiry

The merchandise subject to this antidumping circumvention inquiry consists of CTL plate from the PRC

produced by Wuyang containing 0.0008 percent or more boron, by weight, and otherwise meeting the requirements of the scope of the *Order* as listed under the "Scope of the Order" section above, with the exception of merchandise meeting all of the following requirements: (1) aluminum level of 0.02 percent or greater, by weight; (2) a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and (3) a hardenability test (*i.e.*, Jominy test) result indicating a boron factor of 1.8 or greater. The Department also intends to address whether its circumvention ruling will apply to particular producers, exporters, and/or importers (*e.g.*, Stemcor) or to U.S. imports of all CTL plate from the PRC.

Initiation of Minor Alterations Antidumping Circumvention Proceeding

Section 781(c)(1) of the Act provides that the Department may find circumvention of an antidumping duty order when products which are of the class or kind of merchandise subject to an antidumping duty order have been "altered in form or appearance in minor respects . . . whether or not included in the same tariff classification." The Department notes that, while the statute is silent as to what factors to consider in determining whether alterations are properly considered "minor," the legislative history of this provision indicates there are certain factors which should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, the Department has generally relied upon "such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products." *See* S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987) ("In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article.")

Overall Physical Characteristics

Domestic Producers maintain that CTL plate with the addition of boron is produced in the same manner and to the same specifications as subject CTL plate. *See* Domestic Producers' Request at 13. Domestic Producers note that while boron can improve steel's hardenability, there are certain other

parameters that must be met. *See id.* at 13–14. Specifically, Domestic Producers maintain that if CTL plate is to be used as an alloy steel plate (i.e., boron steel plate), then an aluminum level of 0.02 percent or greater, by weight; a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and a hardenability test (i.e., Jominy test) result indicating a boron factor of 1.8 or greater must be present. *See id.*

Expectations of the Ultimate Users

Domestic Producers indicate that they are unaware of any instances where customers expect or request CTL plate with small amounts of boron added, other than to potentially avoid the added expense to the plate products that result from the antidumping duties in place. *See id.* at 15. Domestic Producers argue that without the proper amounts of aluminum and titanium and sufficient hardenability, there would be no reason to request the addition of boron nor would there be a basis for concluding that the presence of small amounts of boron added any special properties to CTL plate. *See id.*

Use of the Merchandise

Domestic Producers state the product at issue is used for the same purposes as subject merchandise. *See id.* at 16. Moreover, Domestic Producers assert that CTL plate with small amounts of boron is not suitable for different or additional uses compared to subject CTL plate without boron. *See id.* Domestic Producers conclude, therefore, that Wuyang's customers would have no basis for concluding that the presence of small amounts of boron imparts any special properties to the CTL plate beyond those already present in ASTM A830 plate without boron. *See id.*

Channels of Marketing

Domestic Producers state the channels of marketing for the boron-added CTL plate and the subject CTL plate are the same, noting that both products are marketed in the same manner, appeal to the same end users, and are used for the same end uses. *See id.*

Cost of Modification

Domestic Producers indicate that the addition of boron at levels recognized as alloy amounts by the tariff schedule involve minimal additional cost. In addition, Domestic Producers cite the Department's finding in a previous ruling that reaching the 0.0008 percent threshold for boron involved a cost amounting to considerably less than one-third of one percent of the sales price. *See Domestic Producers' Request* at 16–17.

Based on the information provided by Domestic Producers, the Department finds there is sufficient basis to initiate an antidumping circumvention inquiry, pursuant to section 781(c) of the Act, to determine whether the merchandise subject to the inquiry (identified in the "Merchandise Subject to the Minor Alterations Antidumping Circumvention Inquiry" section above) involves a minor alteration to subject merchandise that is so insignificant as to render the resulting merchandise (classified as "alloy" steel under the HTS) subject to the *Order* on CTL plate from the PRC. As noted above, in making this determination the Department also intends to address whether its circumvention ruling applies to particular producers, exporters, and/or importers or to all U.S. imports of CTL plate from the PRC. Although Domestic Producers requested that the Department make a final ruling within 45 days, additional time is needed for further inquiry into Domestic Producers' allegations and Stemcor's comments.

The Department will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

We intend to notify the International Trade Commission in the event of an affirmative preliminary determination of circumvention, in accordance with 781(e)(1) of the Act and 19 CFR 351.225(f)(7)(i)(C). The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation notice.

This notice is published in accordance with sections 781(c) and (d) of the Act and 19

CFR 351.225(i).

Dated: April 16, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XS60

Marine Mammals; Subsistence Taking of Northern Fur Seals; St. George

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

ACTION: Notice; request for comments.

SUMMARY: NMFS announces the receipt of a petition for rulemaking under the Administrative Procedure Act (APA). The Pribilof Island Community of St. George Island, Traditional Council (Council) petitioned NMFS to revise regulations governing the subsistence taking of northern fur seals to allow residents of St. George Island to take male fur seal young of the year during the fall. NMFS solicits public comments on this request.

DATES: Written comments must be received at the appropriate address or fax number by June 22, 2010.

ADDRESSES: Information related to the request for rulemaking is available on the Internet at the following address: <http://www.fakr.noaa.gov/protectedresources/seals/fur.htm>.

Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Email: furseal@noaa.gov. Include in the subject line the following document identifier: Northern Fur Seal St. George. Email comments with or without attachments are limited to 5 megabytes;
- Mail: Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802;
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK; or
- Fax: 907 586 7557.

All comments received are a part of the public record. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Michael Williams, (907) 271-5006, email Michael.Williams@noaa.gov; Kaja Brix, (907) 586-7235, email Kaja.Brix@noaa.gov; or Tom Eagle, (301) 713-2322, ext. 105, email Tom.Eagle@noaa.gov.