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Dated: April 16, 2013.

Andrew McGilvray,
Executive Secretary.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-869]

Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Initiation of Antidumping Duty Investigation

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

DATES: *Effective Date:* April 23, 2013.

FOR FURTHER INFORMATION CONTACT:

Dena Crossland or David Cordell at (202) 482-3362 or (202) 482-0408, respectively, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On March 27, 2013, the Department of Commerce (the "Department") received an antidumping duty ("AD") petition concerning imports of diffusion-annealed, nickel-plated flat-rolled steel products from Japan ("certain nickel-plated, flat-rolled steel"), filed in proper form by Thomas Steel Strip Corporation ("Petitioner").¹ Petitioner is a domestic producer of certain nickel-plated, flat-rolled steel. On April 2, 2013, Petitioner provided a clarification and supplement to the scope language provided in the Petition.² The Department requested additional information and clarification of certain areas of the Petition on April 2, 2013.³ Petitioner filed its response to this request on April 5, 2013.⁴ Petitioner filed a business proprietary document, which identified the source of the pricing data included in Exhibit 11 to the Petition, on April 9, 2013. On April 11, 2013, Department officials held a

telephone conference call with that source to confirm the information provided.⁵

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the "Act"), Petitioner alleges that imports of certain nickel-plated, flat-rolled steel from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed this Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the initiation of the AD investigation that Petitioner is requesting. See the "Determination of Industry Support for the Petition" section below.

Period of Investigation

Because the Petition was filed on March 27, 2013, the period of investigation ("POI") is January 1, 2012, through December 31, 2012.⁶

Scope of the Investigation

The product covered by this investigation is certain nickel-plated, flat-rolled steel from Japan. For a full description of the scope of the investigation, see the "Scope of the Investigation," in Appendix I of this notice.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by May 6, 2013, 5:00 p.m. Eastern Standard Time, 20 calendar days from the signature date of this notice. All comments and submissions to the Department must be filed electronically using Import

Administration's Antidumping Countervailing Duty Centralized Electronic Service System ("IA ACCESS").⁷ An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Comments on Product Characteristics for Antidumping Duty Questionnaire

The Department requests comments from interested parties regarding the appropriate physical characteristics of certain nickel-plated, flat-rolled steel to be reported in response to the Department's AD questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to develop appropriate product-comparison criteria and to allow respondent to report the relevant costs of production, if necessary.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product-comparison criteria. We find that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe certain nickel-plated, flat-rolled steel, it may be that only a select few product characteristics take into account commercially meaningful physical

¹ See Antidumping Duty Petition on Diffusion-Annealed, Nickel-Plated Steel Flat-Rolled Products from Japan, dated March 27, 2013 ("Petition").

² See Memorandum to the File from Richard Weible, "Conversation with Petitioners Regarding Scope," dated March 29, 2013, and First Supplement to the Petition, dated April 2, 2013.

³ See First Department Supplemental Questionnaire issued on April 2, 2013.

⁴ See Second Supplement to the Petition dated April 5, 2013 ("Second Petition Supplement").

⁵ See Memorandum to the File from Dena Crossland, dated April 12, 2013.

⁶ See 19 CFR 351.204(b)(1).

⁷ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on using IAACCESS can be found at <https://iaaccess.trade.gov/help.aspx> and a handbook can be found at <https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, we must receive comments filed in accordance with the Department's electronic filing requirements, available at 19 CFR 351.303, by May 6, 2013. Rebuttal comments must be received by May 13, 2013.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of

time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.⁸

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that certain nickel-plated, flat-rolled steel constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.⁹

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation," in Appendix I of this notice. To establish industry support, Petitioner provided its own production of the domestic like product in 2012.¹⁰ Petitioner states that it was the sole remaining U.S. producer of the domestic like product in calendar year 2012 and, therefore, the Petition is supported by 100 percent of the U.S. industry.¹¹

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioner has established industry support.¹² First, the Petition established support

⁸ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

⁹ For a discussion of the domestic like product analysis in this case, see Antidumping Duty Investigation Initiation Checklist: Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan ("Initiation Checklist") at Attachment II, Analysis of Industry Support for the Petition Covering Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan, dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit, Room 7046 of the main Department of Commerce building.

¹⁰ See Petition, at 54 (Table 12).

¹¹ See Petition, at 6–7; see also Second Petition Supplement, at 9–10 and Exhibits 32–33.

¹² See Initiation Checklist at Attachment II.

from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (e.g., polling).¹³ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.¹⁴ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.¹⁵ Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the AD investigation that it is requesting the Department initiate.¹⁶

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value ("NV"). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.¹⁷

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenue; declining capacity utilization, production, and shipments; reduced employment and hours worked; increased inventories; and decline in financial performance.¹⁸ We have

¹³ See section 732(c)(4)(D) of the Act; see also Initiation Checklist at Attachment II.

¹⁴ See Initiation Checklist at Attachment II.

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See Petition, at 41.

¹⁸ See Petition, at 2–4, 24–28, 40–65 and Exhibits 10–11, 14–16, 22–23, and 25–31; see also Second

assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.¹⁹

Allegation of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of certain nickel-plated, flat-rolled steel from Japan. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the Initiation Checklist.

Export Price

Petitioner calculated export price ("EP") using two sources. First, Petitioner used competitive sales information obtained in the market through customer negotiations. Second, Petitioner used U.S. Bureau of Census ("Census") import statistics under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7210.90.6000 and 7212.50.0000, corresponding to bills of lading, as obtained through Zepol Corporation,²⁰ that specifically identify the imports as "diffusion-annealed, nickel-plated steel."

With respect to the competitive sales data, Petitioner made adjustments for CIF charges, import duties and commissions to estimate the ex-factory price. Petitioner also claimed that there would be warehousing costs in the United States as well as credit expenses, but that for the purposes of the Petition, these expenses were not estimated or deducted, thereby understating the full extent of dumping.

With respect to the import statistics, since HTSUS subheadings 7210.90.6000 and 7212.50.0000 are "basket" tariff categories include more than certain nickel-plated, flat-rolled steel, in order to confirm the accuracy and reliability of the use of U.S. import statistics under these HTSUS subheadings, Petitioner compared the U.S. import quantity by ports and month for these HTSUS subheadings to the quantity of imports of certain nickel-plated, flat-rolled steel

from Japan captured in bills of lading. Petitioner argues that where the bill of lading corresponds precisely to the port of entry, month of importation and quantity, the average unit value provided by the Census statistics is an appropriate indicator of the price of the subject merchandise. In addition, Petitioner compared the average unit customs values and average unit landed cost values with actual market prices. According to Petitioner, this data corroborates the accuracy of the Census data. Petitioner notes that because the customs value per metric ton represents the F.O.B. origin value of the imported merchandise, no adjustments were made with respect to this value for purposes of estimating the EP.

Normal Value

Pursuant to section 773(a)(1)(B)(i) of the Act, Petitioner based NV on prices in Japan for sales to the largest Japanese battery producers, which were obtained by an independent market research organization. Petitioner asserts that these products correspond to the specifications for certain nickel-plated, flat-rolled steel exported to the United States and represent Japanese home market pricing for large-volume products to major customers through the fourth quarter 2012. While acknowledging that no adjustments were made to reflect credit terms, Petitioner notes that accounting for this deduction would have a *de minimis* impact on the estimated dumping margins.

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of certain nickel-plated, flat-rolled steel from Japan are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NVs, in accordance with section 773(a)(1) of the Act, the estimated dumping margins for certain nickel-plated, flat-rolled steel from Japan range from 56.50 percent to 77.70 percent.²¹

Initiation of Antidumping Investigation

Based upon the examination of the Petition on certain nickel-plated, flat-rolled steel from Japan, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating the AD investigation to determine whether imports of certain nickel-plated, flat-rolled steel from Japan are being, or are likely to be, sold

in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

Following standard practice in AD investigations involving market economy countries, in the event the Department determines that the number of known exporters or producers for this investigation is large, the Department may select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports under the HTSUS 7210.90.6000 and 7212.50.0000 for certain nickel-plated, flat-rolled steel from Japan. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within seven days of publication of this **Federal Register** notice.²²

The Petition names three companies as producers of certain nickel-plated, flat-rolled steel from Japan: Toyo Kohan Co., Ltd., Sumitomo-Nippon Steel Corp., and Katayama Special Industries.²³ We currently do not know of any other producers of subject merchandise. We will consider comments from interested parties with respect to respondent selection.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), the Government of Japan was provided access to a copy of the public version of the Petition via IA ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine no later than May 13, 2013, whether

Petition Supplement, at 24–26 and Revised Exhibits 14, 23 and Exhibit 32.

¹⁹ See Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petition Covering Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan.

²⁰ Zepol Corporation provides import data through its international trade tools (<http://www.zepol.com>).

²¹ See Petition, at 30 and Exhibits 10, 11, 12 and 17 and Second Petition Supplement, dated April 5, 2013, at 23 and Revised Exhibits 12, 17 and 18.

²² See *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations*, 76 FR 23281, 23285 (April 26, 2011).

²³ See Petition, at 22.

there is a reasonable indication that imports of certain nickel-plated, flat-rolled steel from Japan are materially injuring or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD/countervailing duty ("CVD") proceeding must certify to the accuracy and completeness of that information.²⁴ Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceedings initiated on or after March 14, 2011.²⁵ The formats for the revised certifications are provided at the end of the *Interim Final Rule*. Foreign governments and their officials may continue to submit certifications in either the format that was in use prior to the effective date of the *Interim Final Rule*, or in the format provided in the *Supplemental Interim Final Rule*.²⁶ The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

²⁴ See section 782(b) of the Act.

²⁵ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule*, 76 FR 7491 (February 10, 2011) (*Interim Final Rule*) amending 19 CFR 351.303(g)(1) and (2) and supplemented by *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule*, 76 FR 54697 (September 2, 2011) (*Supplemental Interim Final Rule*).

²⁶ See *Supplemental Interim Final Rule*.

Dated: April 16, 2013.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I—Scope of the Investigation

The diffusion-annealed, nickel-plated flat-rolled steel products included in this investigation are flat-rolled, cold-reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (i.e., "diffusion-annealed"); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness. For purposes of this investigation, "nickel-based alloys" include all nickel alloys with other metals in which nickel accounts for at least 80 percent of the alloy by volume.

Imports of merchandise included in the scope of this investigation are classified primarily under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7212.50.0000 and 7210.90.6000, but may also be classified under HTSUS subheadings 7210.70.6090, 7212.40.1000, 7212.40.5000, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.90.0010, 7220.90.0015, 7225.99.0090, or 7226.99.0180. The foregoing HTSUS subheadings are provided only for convenience and customs purposes. The written description of the scope is dispositive.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC632

Marine Mammals; File No. 14809

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Douglas Nowacek, Ph.D., Duke University—Marine Laboratory, 135 Duke Marine Lab Rd, Beaufort, NC 28516, has applied in due form for a permit to conduct research on 34 cetacean species.

DATES: Written, telefaxed, or email comments must be received on or before May 23, 2013.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting

File No. 14809 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices: see

SUPPLEMENTARY INFORMATION.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301)713-0376, or by email to NMFS.Pr1Comments@noaa.gov. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT:

Carrie Hubard or Amy Hapeman, (301)427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

The applicant is requesting a five-year permit to conduct comparative research on cetaceans in the North Atlantic, North Pacific and Southern Oceans. Methods to be used include suction cup tagging, acoustic playbacks, passive acoustics, biopsy sampling, photo-identification, and behavioral observations. The applicant proposes to take three endangered cetacean species: humpback (*Megaptera novaeangliae*), sperm (*Physeter macrocephalus*), and southern right (*Eubalaena australis*) whales, as well as 31 cetacean species that are not listed as threatened or endangered. Of the 25 species that would be targeted for tagging and active acoustic playbacks, a maximum of 50 individuals of each species or stock could be tagged and exposed to playbacks annually. The primary research objectives are to: (1) document baseline foraging and social behavior of cetacean species under different ecological conditions; (2) place these behaviors in a population-level context; and (3) determine how these species respond to various natural sound sources. Specifically, the applicant is interested in the influence of acoustic