

### Proposed Methodology

In the recent post-preliminary determination memorandum in the antidumping investigations of certain steel nails from the United Arab Emirates and from the People's Republic of China, the Department announced and applied a new targeted dumping standard and methodology for analyzing a targeted dumping allegation. See Memorandum to David M. Spooner entitled "Post-Preliminary Determinations on Targeted Dumping," from Stephen J. Claeys, dated April 21, 2008.

For future investigations, the Department proposes to adopt this new methodology for determining whether targeted dumping exists. The methodology involves a two-stage test: the first of which addresses the pattern requirement and the second addresses the significant difference requirement. All price comparisons would be done on the basis of identical merchandise. The test procedures described below are the same for customer, region or time-period targeting, even though the example given below involves customer targeting. The first stage of the test, referred to as the "standard deviation test," would provide that the Department determine, on an exporter-specific basis, the share of the allegedly targeted customer's purchases of subject merchandise, by sales value, that are at prices more than one standard deviation below the weighted-average price to all customers of that exporter, targeted and non-targeted. If that share exceeds 33 percent of the total value of the exporter's sales of subject merchandise to the allegedly targeted customer, then the pattern requirement is met. The calculation of the standard deviation would be done product-by-product (*i.e.*, "control number" by "control number") using period of investigation ("POI")-wide average prices (weighted by sales value) for each allegedly targeted customer and each distinct non-targeted customer.

If the first test is met, in the second stage, the Department would examine all the sales of identical merchandise by that exporter to the allegedly targeted customer for which the standard deviation requirement is met and determine the total sales value for which the difference between (i) the sales-weighted average price to the allegedly targeted customer and (ii) the next higher sales-weighted average price to a non-targeted customer exceeds the average price gap (weighted by sales value) for the non-targeted group. Each of the price gaps in the non-targeted group would be weighted

by the combined sales associated with the pair of prices to non-targeted customers that make up the gap. If the share of the sales that meet this test exceeds 5 percent of the total value of sales of subject merchandise to the allegedly targeted customer, the significant difference requirement is met and the Department would determine that customer targeting has occurred.

### Request for Comments

In addition to comments on the methodology described above, the Department requests comments on appropriate criteria and standards for the definitions of "region" and "time period." Please comment on the extent to which the definitions for region and time period in a targeted dumping allegation should be reflective of the industry and commercial market in the United States.

Also, as the statute allows targeted dumping allegations with respect to customers, regions, or time periods, the Department requests comment on how it should handle multiple allegations made with respect to one respondent, (*i.e.* a respondent is allegedly targeting certain customers and certain regions). For example, when calculating non-targeted customer weighted-average sales prices in the second stage (the gap test), should the Department exclude sales to an allegedly targeted region? Please also comment on what standards, if any, the Department should adopt for accepting an allegation of targeted dumping. For example, should some type of *de minimis* threshold apply to the sales on which an allegation is based, either in terms of the quantity of control numbers or share of sales covered? Finally, the Department requests comment on the application of the alternative calculation methodology (average-to-transaction comparison) and the conditions, if any, under which the alternative methodology should apply to all sales to the target even if some sales of a control number do not pass the targeted dumping test.

### Submission of Comments

Persons wishing to comment should file a signed original and six copies of each set of comments within 30 days of publication of this notice. The Department will consider all comments received by the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their

<sup>1</sup> For example: If non-target A's weighted-average price is \$1.00 with total value of \$100 and non-target B's weighted-average price is \$.95 with total value of \$120, then the difference of \$.05 (\$1.00 - .95) would be weighted by \$220 (\$100 + 120).

consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in its development of a targeted dumping analysis. The Department requires that comments be submitted in written form. The Department also requests submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration website at the following address: <http://ia.ita.doc.gov>. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, email address: [webmaster-support@ita.doc.gov](mailto:webmaster-support@ita.doc.gov).

Dated: May 6, 2008.

**David M. Spooner,**  
Assistant Secretary for Import  
Administration.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XH31

### Taking and Importing of Marine Mammals

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

**ACTION:** Notice; affirmative finding renewal.

**SUMMARY:** The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has renewed the affirmative finding for the Government of Mexico under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation

Program (IDCP) by Mexican-flag purse seine vessels or purse seine vessels operating under Mexican jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of Mexico and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

**DATES:** Effective April 1, 2008, through March 31, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213; phone 562-980-4000; fax 562-980-4018.

**SUPPLEMENTARY INFORMATION:** The MMPA, 16 U.S.C. 1361 *et seq.*, allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS will review the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Mexico or obtained from the IATTC and the Department of State

and has determined that Mexico has met the MMPA's requirements to receive an annual affirmative finding renewal.

After consultation with the Department of State, the Assistant Administrator issued the Government of Mexico's annual affirmative finding renewal, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Mexican-flag purse seine vessels or purse seine vessels operating under Mexican jurisdiction. Mexico's current affirmative finding remains valid through March 31, 2010, subject to subsequent annual reviews by NMFS.

Dated: May 5, 2008.

**James W. Balsiger,**

*Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XG04**

#### Taking and Importing of Marine Mammals

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

**ACTION:** Notice; affirmative finding renewal.

**SUMMARY:** The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has renewed the affirmative finding for the Government of Spain under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Spanish-flag purse seine vessels or purse seine vessels operating under Spanish jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of Spain and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

**DATES:** The renewal is effective from April 1, 2008, through March 31, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA

90802-4213; phone 562-980-4000; fax 562-980-4018.

**SUPPLEMENTARY INFORMATION:** The MMPA, 16 U.S.C. 1361 *et seq.*, allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. If granted, NMFS will review the affirmative finding on an annual basis and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Spain or obtained from the IATTC and the Department of State and has determined that Spain has met the MMPA's requirements to receive an annual affirmative finding renewal. Spain's current 5-year affirmative finding request remains valid through March 31, 2010, subject to annual review by NMFS.

After consultation with the Department of State, the Assistant Administrator issued the Government of Spain's annual affirmative finding renewal, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the