

DEPARTMENT OF COMMERCE**International Trade Administration****Department of Health and Human Services, NIH; Notice of Decision on Application for Duty-Free Entry of Electron Microscope**

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03-014. *Applicant:* Department of Health and Human Services, NIH, Research Triangle, NC 27709. *Instrument:* Electron Microscope, Model Tecnai G2 BioTWIN, BioTWIN Upgrade, and Accessories. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 68 FR 16472, April 4, 2003. *Order Date:* August 1, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03-11619 Filed 5-8-03; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration****Vanderbilt University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument**

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03-010. *Applicant:* Vanderbilt University, Nashville, TN 37203. *Instrument:* Scanning Near-field Optical Microscope, Model AlphaSNOM. *Manufacturer:* Wissenschaftliche Instrumente und Technologie GmbH, Germany. *Intended Use:* See notice at 68 FR 14197, March 24, 2003.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) A standard invertible microscope platform with multiple connections for lasers and detection ports, (2) resolution of 80 nm, (3) capability of switching readily among a wide variety of operating modes with minimal sample rearrangements and (4) optimal flexibility for operation in a multi-user environment. A university research institute advised May 1, 2003, that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03-11618 Filed 5-8-03; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[C-427-815]

Stainless Steel Sheet and Strip in Coils From France: Preliminary Results of Second Countervailing Duty Administrative Review

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

ACTION: Notice of preliminary results of second countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on stainless steel sheet and strip in coils from France for the period January 1, 2001, through December 31, 2001. We have preliminarily found that Usinor, the sole producer/exporter covered by

this review, has received countervailable subsidies during the period of review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Jesse Cortes, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3986.

SUPPLEMENTARY INFORMATION:

Case History

The Department published the countervailing duty order on stainless steel sheet and strip in coils from France on August 6, 1999. See *Amended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 64 FR 42923. The Department published the results of its first administrative review of the order on October 3, 2002. See *Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing Duty Administrative Review*, 67 FR 62098 ("First Review").

On August 6, 2002, the Department published a notice of "Opportunity to Request Administrative Review" of this countervailing duty order for calendar year 2001. See *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 50856. We received a review request from Uguine SA ("Uguine") on August 29, 2002. We published the initiation of this review on September 25, 2002. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, 67 FR 60210.

On October 18, 2002, we issued countervailing duty questionnaires to the Commission of the European Union ("EC"), the Government of France ("GOF"), and Usinor. We received responses to our questionnaires on December 13, 2002 (EC), and December 19, 2002 (GOF and Usinor). We issued a supplemental questionnaire to Usinor on February 24, 2003, and received Usinor's response on March 20, 2003. We received no comments on the responses from Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization ("petitioners").

Scope of the Review

The products covered by this countervailing duty order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise covered by this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at the following subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80.

Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*,

cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

Also excluded from the scope of this order are:

Flapper Valve Steel: Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxid of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Suspension Foil: Suspension foil is a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm. over 685 mm length.

Certain Stainless Steel Foil for Automotive Catalytic Converters: This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum

of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent Magnet Iron-chromium-cobalt Alloy Stainless Strip: This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."¹

Certain Electrical Resistance Alloy Steel: This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high-temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."²

Certain Martensitic Precipitation-hardenable Stainless Steel: This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is

¹ "Arnokrome III" is a trademark of the Arnold Engineering Company.

² "Gilphy 36" is a trademark of Imphy, S.A.

currently available under proprietary trade names such as "Durphynox 17."³

Three Specialty Stainless Steels Typically Used in Certain Industrial Blades and Surgical and Medical Instruments: These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).⁴ This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo."⁵ The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."

Period of Review

The period of review ("POR") for which we are measuring subsidies is January 1, 2001, through December 31, 2001.

Attribution of Subsidies

Usinor has filed its responses on behalf of its French affiliates involved in the manufacture, production or exportation of the subject merchandise. These affiliates are: Ugine SA, Imphy Ugine Precision, Ugine France Service, Sollac Mediterranee, Usinor Packaging, Sollac Lorraine, Sollac Atlantique, CARLAM, G. Fer, IRSID, and Usinor Stainless (hereafter collectively referred to as "Usinor"). Usinor holds a majority interest in all of these companies.

Therefore, in accordance with 19 CFR 351.525(b)(6)(iii), we have preliminarily attributed subsidies received by these companies to the total sales by Usinor of French-produced merchandise.

Changes in ownership

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit ("CAFC"), in *Delverde Sri v. United States*, 202 F.3d 1360, 1365 (Fed. Cir. 2000), *reh'g en banc denied*, 2000 U.S. App. LEXIS 15215 (June 20, 2000) ("*Delverde III*"), rejected the Department's change-in-ownership methodology as explained in the *General Issues Appendix*.⁶

In accordance with the CAFC's finding, the Department developed a new change-in-ownership methodology, which was applied in a redetermination resulting from a remand order by the Court of International Trade ("CIT") in *Allegheny-Ludlum Corp. v. United States*, No. 99-09-00566 (CIT August 15, 2000) ("*Allegheny I*"). See *final Results of Redetermination Pursuant to Court Remand: Allegheny-Ludlum Corp., et al v. United States* (Dept. of Commerce, December 20, 2000) ("*Redetermination I*"). In *Allegheny I*, the CIT reviewed the final determination which gave rise to the countervailing duty order covered by this review. In *Redetermination I*, the Department examined the privatization of Usinor and found that the pre-privatization subsidies continued to benefit subject merchandise exported to the United States after Usinor's privatization. Upon review of *Redetermination I*, the CIT again remanded the issue to the Department. See *Allegheny Ludlum Corp. v. United States*, 182 F. Supp. 2d 1357, 1369 (CIT 2002) ("*Allegheny II*").

On June 3, 2002, the Department issued its second *Results of Redetermination Pursuant to Court Remand: Allegheny Ludlum Corp., et al. v. United States* ("*Redetermination II*"), which the CIT sustained on September 24, 2002. See *Allegheny Ludlum Corp. v. United States*, No. 99-09-00566, 2002 Ct. Intl. Trade Lexis 114, Slip Op. 2002-114 (September 24, 2002) ("*The Allegheny Decision*"). The *Allegheny Decision* is currently on appeal at the CAFC. Usinor argues that the *Allegheny Decision* rejects as unlawful the change-in-ownership test applied by the Department in its *Redetermination I*. Pending a decision from the CAFC, however, we have continued to apply the same change-in-ownership

methodology employed in *Redetermination I* in these preliminary results.

The first step under this methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a "financial contribution" and a "benefit" have been received by the "person" under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the POI, the Department would then continue to countervail the remaining benefits of that subsidy.

In making the "person" determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

Usinor's Privatization

Up until the time of Usinor's privatization, Usinor was owned (directly or indirectly) by the GOF. Usinor was privatized beginning in July 1995, when the GOF and Clindus offered the vast majority of their shares in the company for sale. Clindus was a subsidiary of Credit Lyonnais, which at that time was controlled by the GOF. After the privatization and, in particular, by the end of calendar year 1997, 82.28 percent of Usinor's shares

³ "Durphynox 17" is a trademark of Imphy, S.A.

⁴ This list of uses is illustrative and provided for descriptive purposes only.

⁵ "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

⁶ *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37225 (July 9, 1993).

were held by private shareholders who could trade them freely. Usinor's employees owned 5.16 percent of Usinor's shares; Clindus, 2.5 percent; and, the GOF, 0.93 percent. The remaining 14.29 percent of Usinor's shares were held by the so-called "Stable Shareholders." According to Usinor's 2000 annual report, the government-owned Electricite de France continues to own 3.6 percent of Usinor's shares.

In analyzing whether the producers of merchandise subject to review is the same business entity as pre-privatization Usinor, we have examined whether Usinor continued the same general business operations, retained production facilities, had a continuity of assets and liabilities, and retained the personnel of the pre-privatization Usinor. Based on our analysis, we have concluded that the privatized Usinor is, for all intents and purposes, the same person as the GOF-owned steel producer of the same name which existed prior to the privatization. Consequently, the subsidies bestowed on Usinor prior to its 1995 privatization are attributable to present-day Usinor and continue to benefit the subject merchandise during the POR.

1. Continuity of General Business Operations

Usinor has produced the same products and remained the same corporation at least since the late 1980s. In 1987, Usinor became the holding company for the French steel groups, Usinor and Sacilor (the GOF had majority ownership of both Usinor and Sacilor beginning in 1981). Usinor's principal businesses covered flat products, stainless steel and alloys, and specialty products. In 1994, these three product groups were produced by three subsidiaries: Sollac, Ugine and Aster (respectively). See Usinor 12/19/2002 Questionnaire Response, Exhibit 6 at 46. This same structure continued after Usinor's privatization in 1995. Usinor's organizational chart during the original investigation shows the same three major products being produced by the same three subsidiaries. See *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 30774, 30776 (June 8, 1999) ("SSSS from France").

In 1994 (prior to the privatization), flat products constituted 55 percent of consolidated sales, while stainless and specialty products constituted 20 and 18 percent respectively. See Usinor 12/19/2002 Questionnaire Response, Exhibit 6 at 47. In the years following privatization (1995–2000), flat carbon

steels continued to account for between 49 and 58 percent of Usinor's consolidated net sales. See *Stainless Steel Sheet and Strip in Coils from France; Preliminary Results of Countervailing Duty Administrative Review*, 67 FR 31774, 31776 (May 10, 2002) ("First Review Prelim"). Sales of stainless and alloy, and specialty steel accounted for between 23 and 25 percent, and between 19 and 21 percent, respectively, during the post-privatization years, 1995 through 1997. Since then, sales of stainless, alloy, and specialty steel have been combined in Usinor's annual report and a separate category has been reported for "processing and distribution." The combined sales of stainless, alloy and specialty steel ranged from 21 to 28 percent of Usinor's consolidated net sales over the period 1998–2000, while processing and distribution ranged from 6 to 18 percent over the same period. See *Id.* In 1999, Usinor divested itself of its specialty steels business.

We have also examined whether post-privatization Usinor held itself out as the continuation of the previous enterprise (e.g., by retaining the same name). In this instance, Usinor retained its same name and there is no indication that the privatized company held itself out as anything other than a continuation of pre-privatization Usinor.

The continuity of Usinor's business operations is also reflected in Usinor's customer base. Prior to privatization, the automobile industry was a principal purchaser of Usinor's output, accounting for approximately 30 percent of Usinor's sales in 1994 and the construction industry was its second largest purchaser, accounting for approximately 26 percent of Usinor's sales in 1994. See Usinor 12/19/2002 Questionnaire Response, Exhibit 6, 17–18. In 1997 and 2000, the automobile industry was still Usinor's major customer (36 percent of Usinor's sales in 1997 and 38 percent in 2000). The construction industry has continued as the second largest purchaser: 23 percent in 1997, and 15 percent in 2000. See *First Review Prelim*, 67 FR at 31777.

2. Continuity of Production Facilities

Neither product lines nor production capacity changed as a result of the privatization, except those changes that occurred in an ongoing manner in the ordinary course of business. No facilities or production lines were added or eliminated specifically as a result of the sale. A comparison of the Prospectus for the 1995 privatization and Usinor's 1997 Annual Report demonstrates that steel production facilities have

remained intact. The company has continued to focus on an "all steel" strategy, engaging in all aspects of the steel production process and produces a wide variety of steel products. Finally, Usinor's steel production facilities did not change their physical locations.

3. Continuity of Assets and Liabilities

Usinor was sold intact, with all of its assets and liabilities. See Usinor 12/19/2002 Questionnaire Response, Exhibit 21 and *First Review Prelim*, 67 FR at 31777. While the GOF continued to own a small percentage of Usinor's shares, there is no indication that it retained any of Usinor's assets or liabilities.

4. Retention of Personnel

Usinor's Articles of Incorporation changed as a result of the privatization, and the new Articles of Incorporation specified new procedures for electing the Board of Directors. New directors were elected to the Board under the new procedures. However, Usinor's Chairman and Chief Executive Officer remained the same before and after the privatization. Similarly, Usinor's workforce did not change. See *First Review Prelim*, 67 FR at 31777.

Therefore, based on the facts and our analysis of a variety of relevant factors, once privatized, Usinor continued to operate, for all intents and purposes, as the same person that existed prior to the privatization and, thus, the pre-privatization subsidies continued to benefit Usinor even under private ownership.

Use of Facts Available

Sections 776(a)(2)(A) and (B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act, effective January 1, 1995 ("the Act"), require the use of facts available when an interested party withholds information requested by the Department, or when an interested party fails to provide information required in a timely manner and in the format requested. In selecting from among facts available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party if the Department determines that the party has failed to cooperate to the best of its ability. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping duty investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 or 762 review; or (4) any other information placed on the record.

See section 776(b) of the Act; see also, 19 CFR 351.308(a), (b), and (c).

Section 782(d) of the Act requires the Department to inform a respondent if there are deficiencies in its responses and allow it a reasonable time to correct these deficiencies before the Department applies facts available. Even if the information provided is deficient, if it is usable without undue difficulty, is timely, is verifiable, can serve as a reliable basis for reaching our determination, and if the party has cooperated to the best of its ability in providing responses to the Department's questionnaires, section 782(e) of the Act directs the Department not to decline to consider deficient submissions.

In the present review, the GOF did not provide information regarding the specificity of benefits under certain programs included under Investment/ Operating Subsidies reported by Usinor. Instead, the GOF responded that "in view of the multiplicity of programs, the noncountervailability of several of them, and the small amounts involved, the GOF has not undertaken to provide the requested documentation." See GOF Questionnaire Response, dated December 19, 2002, at 6-7. Similarly, the GOF was asked to provide this information in the investigation segment of this proceeding and elected not to do so. See *SSSS from France*, 64 FR at 30779-80. Thus, the GOF is aware of the specific information needed by the Department and apparently possesses responsive information, but has declined to provide it in response to our questionnaires.

Given these circumstances, the Department preliminarily has determined to apply facts available, pursuant to section 776(a)(2)(A) of the Act. Further, we preliminarily find that an adverse inference is warranted in applying facts available because, as noted above, the GOF elected not to provide information which it could provide and, hence, has not acted to the best of its ability. Verification, if one is conducted, is not the appropriate means for gathering this information.

Because the GOF did not provide information about these programs, including the distribution of benefits under the programs, the Department is unable to make specificity findings. Therefore, in applying adverse facts available, we preliminarily find that these programs are *de facto* specific. See section 771(5A)(D)(ii) of the Act. (Our analysis of the financial contribution and benefit under these programs is discussed below under "Investment/ Operating Subsidies.")

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring benefits are allocated over a period corresponding to the average useful life ("AUL") of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System ("the IRS Tables"). For stainless steel sheet and strip in coils, the IRS Tables prescribe an AUL of 15 years.

To rebut the presumption in favor of the IRS tables, the challenging party must demonstrate that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry in question, and that the difference between the company-specific or country-wide AUL and the IRS tables is significant. See 19 CFR 351.524(d)(2)(i). For this difference to be considered significant, it must be one year or greater. See 19 CFR 351.524(d)(2)(ii).

In this proceeding, Usinor has calculated a company-specific AUL of 12 years. See Usinor 12/19/2002 Questionnaire Response, Exhibit 26. We note, however, that the one allocable subsidy received by Usinor and attributed to Ugine, bonds issued by Fonds d'Intervention Sidérurgique (steel intervention fund) ("FIS"), has previously been allocated over a company-specific AUL of 14 years. The 14-year AUL was calculated in a remand determination involving the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993) ("*French Certain Steel*") and was subsequently used to allocate this same subsidy in *SSSS from France* (64 FR at 30778) and *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From France*, 64 FR 73277, 73280 (December 29, 1999) ("*French Plate*"). Because the 14-year AUL was calculated using company-specific information and the information is more contemporaneous with the bestowal of the subsidy in question than the information underlying Usinor's 12-year calculation, we have continued to use the 14-year AUL to allocate the benefits of the FIS Bonds in this proceeding.

For non-recurring subsidies to Usinor, we applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales

(total or export, as appropriate) in that year. If the amount of subsidies is less than 0.5 percent of sales, the benefits are expensed in full in the year of receipt rather than allocated over the AUL period.

Equityworthiness and Creditworthiness

In *French Certain Steel* and *SSSS from France*, we found Usinor to be unequityworthy from 1986 through 1988 and uncreditworthy from 1982 through 1988. See *French Certain Steel*, 58 FR 37304, 37305; *SSSS from France*, 64 FR 30774, 30778. No new information has been presented in this review to warrant a reconsideration of these findings. Therefore, based upon these previous findings of unequityworthiness and uncreditworthiness, in this review, we continue to find Usinor unequityworthy and uncreditworthy from 1987 through 1988, the years relevant to this proceeding.

Benchmarks for Loans and Discount Rates

As discussed above, we have determined that Usinor was uncreditworthy in 1988, the only year in which it received a countervailable subsidy which is being allocated over time.

In accordance with 19 CFR 341.524(d)(3)(ii), the discount rate for companies considered uncreditworthy is the rate described in 19 CFR 351.505(a)(3)(iii). To calculate that rate, the Department must specify values for four variables: (1) The probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt.

For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa- to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920-1997" (February 1998). For the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds as published in Moody's Investor Service's "Statistical Tables of Default Rates and Recovery Rates" (February 1998). For the commercial interest rate charged to creditworthy borrowers, we used the average of the following long-term interest rates: medium-term credit to enterprises, equipment loan rates as published by the OECD, cost of credit rates published in the *Bulletin of Banque de France*, and private sector bond rates as published by the

International Monetary Fund. For the term of the debt, we used the AUL period for Usinor, as the equity benefits are being allocated over that period.

To measure the benefit from reimbursable advances received by Usinor, we relied on an average long-term interest rate developed in *SSSS from France* for 1989, and on Usinor's company's-specific borrowing rate for 1995.

I. Programs Preliminarily Found To Be Countervailable

A. FIS Bonds

The 1981 Corrected Finance Law granted Usinor the authority to issue convertible bonds. In 1983, the FIS was created to implement that authority. In 1983, 1984, and 1985, Usinor issued convertible bonds to the FIS, which in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In several previous cases, the Department has treated these conversions of Usinor's FIS Bonds into equity as countervailable equity infusions. See *French Certain Steel*, 58 FR at 37307; *French Plate*, 64 FR at 73282; *SSSS from France*, 64 FR at 30779; and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From France*, 58 FR 6221, 6224 (January 27, 1997). These equity infusions were limited to Usinor and were, therefore, specific as a matter of law within the meaning of section 771(5A)(D)(i) of the Act. Also, these equity infusions provided a financial contribution to Usinor within the meaning of section 771(5)(D)(i) of the Act. Finally, because Usinor was unequityworthy at the time of the infusions, we find that Usinor received benefit in the amount of the investments. See Section 771(5)(E)(i) of the Act.

No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our past findings. Therefore, we find that a countervailable benefit is being bestowed on the subject merchandise. Because the final year of the benefit stream for the 1986 infusion was 1999, *i.e.*, prior to this POR, we find that there is no countervailable benefit to the subject merchandise in this POR for the 1986 conversion. Thus, only the 1988 equity infusion continues to provide a benefit in the POR.

Pursuant to 19 CFR 351.507(c), we have treated the 1988 equity infusion as

a non-recurring subsidy and allocated it over time according to 19 CFR 351.524(d). Because Usinor was uncreditworthy in 1988 (*see* section above on "Subsidies Valuation Information: Equityworthiness and Creditworthiness"), we used an uncreditorworthy discount rate to allocate the benefit of the equity infusion.

In *French Plate*, we attributed separately to Usinor and GTS Industries S.A. their relative portions of the benefits from the equity infusion. See *French Plate*, 64 FR at 73282. We have continued to do so in this proceeding. We note, however, that the amount attributed to the respective companies differs from the amounts in *French Plate*. This is because of the revisions to the Department's change-in-ownership methodology since the *French Plate* determination as described in the "Changes in Ownership" section above.

Dividing the POR benefit attributed to Usinor by Usinor's total sales of French-produced merchandise during the POR, we preliminarily find Usinor's net subsidy rate for this program to be 1.06 percent *ad valorem*.

B. Investment/Operating Subsidies

During the period 1987 through the POR, Usinor received a variety of small investment and operating subsidies from various GOF agencies and from the European Coal and Steel Community ("ECSC"). These subsidies were provided to Usinor for research and development, projects to reduce work-related illnesses and accidents, projects to combat water pollution, etc. The subsidies are classified as investment, equipment, or operating subsidies in the company's accounts, depending on how the funds are used.

In *SSSS from France* and *French Plate*, the Department determined that the funding provided to Usinor by the water boards (*les agences de l'eau*) and certain work/training grants were not countervailable. See *SSSS from France*, 64 FR at 30779, 30788; *French Plate*, 64 FR at 73282. Additionally, in the *First Review*, the Department also found that funding provided under ECSC Article 55 was not countervailable. See *First Review*, 67 FR 62098, and accompanying "Issues and Decision Memorandum," at Comment 5. Consistent with these previous findings, we have excluded these particular subsidies from the calculation of the benefit under this program.

Other than the exclusions noted above, we preliminarily find that the investment and operating subsidies provide a financial contribution, as described in section 771(5)(D)(i) of the

Act, and a benefit, as described in section 771(5)(E)(i) of the Act. Also, as discussed above under "Use of Facts Available," we preliminarily find that these investment and operating subsidies are specific within the meaning of section 771(5A)(D)(ii) of the Act. Therefore, consistent with *SSSS from France*, 64 FR at 30779, and *French Plate*, 64 FR at 73282, we preliminarily find that these investment and operating subsidies are countervailable subsidies.

The investment and operating subsidies provided through 2000 have already been determined to be less than 0.5 percent of Usinor's sales of French-produced merchandise in the relevant year. See *SSSS from France*, 64 FR at 30780; *French Plate*, 64 FR at 73283; and the *First Review*, 67 FR at 62098, and accompanying "Issues and Decision Memorandum," at 3-4. Therefore, these benefits were expensed in the years of receipt, in accordance with 19 CFR 351.524(b)(2).

To calculate the benefit received during the POR, we divided the subsidies received by Usinor in the POR by Usinor's total sales of French-produced merchandise during the POR. Accordingly, we preliminarily find Usinor's net subsidy rate for this program to be 0.04 percent *ad valorem*.

C. Funding for Myosotis Project

In *SSSS from France*, we explained that Usinor received grants and reimbursable advances from the GOF to fund the Myosotis project under three agreements. We found that the amounts received by Usinor between 1989 and 1993 were properly expensed in the years of receipt and, hence, that there was no countervailable subsidy to the subject merchandise from these grants. We also found that, under the 1995 agreement, Usinor received a reimbursable advance from the GOF in support of the Myosotis project in 1997. See *SSSS from France*, 64 FR at 30780. In the prior review, Usinor reported that it received another advance in 1999 under the same 1995 agreement. The 1997 and 1999 advances were to be repaid in 1999 and 2001, respectively. See *First Review Prelim*, 67 FR at 31779.

In the instant review, Usinor reported that it recognized the entire 1999 advance as a grant during the POR. See Usinor 12/19/2002 Questionnaire Response at 34. The GOF reported that Usinor made a partial repayment on the balance outstanding from the 1997 advance. See GOF 12/19/2002 Questionnaire Response at 9.

As we established in the *First Review Prelim*, regardless of whether we treat the 1997 reimbursable advance as a

grant, which would have been expensed prior to the POR, or a zero-interest long-term loan, which would yield a benefit of zero during the POR (when rounded to the nearest hundredth), we continue to find that the 1997 reimbursable advance does not confer a countervailable benefit on subject merchandise during the POR. See *First Review Prelim*, 67 FR 31744, 31779.

With regard to the conversion of the 1999 reimbursable advance into a grant during the POR, this conversion constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confers a benefit in the amount of the grant under 19 CFR 351.504. The Department determined in *SSSS from France* that assistance to Usinor for the Myosotis Project was specific. See *SSSS from France*, 64 FR at 30780. We have treated the benefit of the conversion as having occurred during the POR. We divided the total amount of the grant portion of the 1999 advance by Usinor's total sales of French-produced sales during the POR (*i.e.*, the year in which the 1999 reimbursable advance was converted to and approved as a grant). The result was less than 0.5 percent. Therefore, we have expensed the entire amount of the converted 1999 reimbursable advance (*i.e.*, the grant amount) during the POR. See 19 CFR 351.524(b)(2). To calculate the benefit, we divided the amount of the grant by Usinor's total sales of French-produced merchandise during the POR, consistent with the provisions of 19 CFR 351.504.

Therefore, we preliminarily find Usinor's net subsidy rate for the 2001 conversion of the 1999 reimbursable grant under this program to be 0.01 percent *ad valorem*.

II. Programs Preliminarily Found To Be Not Countervailable

A. Loans With Special Characteristics (PACS)

In *SSSS from France*, we determined that Usinor received a countervailable subsidy as a result of the GOF's 1986 conversions of PACS into common shares of Usinor. See *SSSS from France*, 64 FR at 30779. Because the final year of the benefit stream for this subsidy was 1999, *i.e.*, prior to this POR, we preliminarily find that there is no countervailable benefit to the subject merchandise in the POR.

B. Shareholders' Advances

In *SSSS from France*, we determined that Usinor received a countervailable subsidy as a result of shareholder advances made by the GOF in 1982–1986. See *SSSS from France*, 64 FR at

30779. Because the final year of the benefit streams for these advances was 1999, *i.e.*, prior to this POR, we preliminarily find that there is no countervailable benefit to the subject merchandise in the POR.

C. Electric Arc Furnace

In *SSSS from France*, we explained that the GOF had agreed to provide Usinor with reimbursable advances to support the company's efforts to increase the efficiency of the melting process, the first stage in steel production. See *SSSS from France*, 64 FR at 30780. Because the first disbursements were not to be made until 1998, *i.e.*, after the POI in *SSSS from France*, the Department found no benefit during the POI. See *SSSS from France*, 64 FR at 30780. In *French Plate*, the Department also found no benefit during the POI (1998), because the reimbursable advance was treated as a contingent liability loan and no payment would be due on a comparable commercial loan until 1999. See *French Plate*, 64 FR at 73284.

In the present review, Usinor reported that it received reimbursable advances under this program in 1998 and 1999, and that the program was phased out in 1999 and 2000. See Usinor 12/19/2002 Questionnaire Response at 35–36. These advances were approved in 1995, with repayments in 2002 and 2005, respectively. Usinor further reported that no new advances were received during the POR. See Usinor 12/19/2002 Questionnaire Response at 36.

We divided the total amount approved by the GOF for this project by Usinor's total sales of French-produced merchandise in 1995, the year the reimbursable advances were approved. The result was less than 0.5 percent. Therefore, if these reimbursable advances were treated as grants, they would be expensed prior to the POR. See 19 CFR 351.505(d)(2) and 351.524(b)(2). Alternatively, we calculated the possible benefit to Usinor if the reimbursable advances were treated as zero-interest long-term loans. See 19 CFR 351.505(d)(1). The benefit (when rounded to the nearest hundredth) is zero during the POR.

Therefore, we have not analyzed these reimbursable advances further and preliminarily find that they do not confer a countervailable benefit on the subject merchandise during the POR.

D. Conditional Advances

In *SSSS from France*, we explained that Usinor received a conditional advance from the GOF in connection with a project aimed at developing a new type of steel used in the production

of catalytic converters. See *SSSS from France*, 64 FR at 30780. Payments were received by Usinor in 1992 and 1995. Repayment of the conditional advance was contingent upon sales of the product resulting from the project exceeding a set amount. We found that no repayment had been made and we treated the advance as a countervailable short-term, interest-free loan. In the present review, Usinor reported a balance outstanding in the POR and that it received no new assistance under this program. See Usinor 12/19/2002 Questionnaire Response at 32.

Assuming the conditional advance was approved in either 1991 or 1992, we divided the total amount received by Usinor's total sales of French-produced merchandise in each of those years. The result in both instances was less than 0.5 percent. Therefore, if the conditional advance were treated as a grant, it would have been expensed prior to the POR. See 19 CFR 351.505(d). Alternatively, we have calculated the possible benefit to Usinor if the outstanding amount of the conditional advance were treated as a zero-interest long-term loan. See 19 CFR 351.505(d)(1). The benefit (when rounded to the nearest hundredth) is zero during the POR.

Therefore, we have not analyzed the conditional advance further and preliminarily find that it does not confer a countervailable benefit on the subject merchandise during the POR.

III. Programs Preliminary Found To Be Not Used

Based on the information provided in the responses, we find that neither Usinor nor its affiliated companies that produce subject merchandise received benefits under the following programs during the POI:

A. ESF Grants

In *SSSS from France* and *French Plate*, we found that certain Usinor companies had received grants under the European Social Fund ("ESF") for worker training, and that the grants provided countervailable subsidies. Normally, the Department treats benefits from worker training programs to be recurring. See CFR 351.524(c)(1). However, we have found in several cases that ESF grants relate to specific, individual projects that require separate approval and, hence, should be treated as non-recurring grants. See, *e.g.*, *SSSS from France*, 64 FR at 30781; *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40474, 40488 (July 29, 1998).

Because ESF grants are non-recurring subsidies and potentially allocable over time, we reviewed *SSSS from France* and *French Plate* regarding past disbursements to Usinor under this program. In *SSSS from France*, we determined that ESF grants received in 1995 and 1997 were less than 0.5 percent of Ugine's sales in those years. Hence, the benefits of those ESF grants were expensed in the years of receipt. See *SSSS from France*, 64 FR 30781. In *French Plate*, an ESF grant received in 1998 by CLI, a Usinor subsidiary, was also expensed in the year of receipt. In the *First Review*, we determined that the program was not used in 2000. See *First Review*, 67 FR at 62098, and the accompanying "Isseus and Decision Memorandum," at "Programs Determined To Be Not Used." Therefore, we find that ESF grants received by Usinor and its affiliates prior to the POR do not confer a countervailable benefit on the subject merchandise during the POR. Moreover, in the present review, Usinor reported that it did not receive any additional ESF grants during the POR. See 12/19/2002 Response at 36.

B. Export Financing under Natexis Banque Programs

C. DATAR Regional Development Grants (PATs)

D. DATAR 50 Percent Taxing Scheme

E. DATAR Tax Exemption for Industrial Expansion

F. DATAR Tax Credit for Companies Located in Special Investment Zone

G. DATAR Tax Credits for Research

H. GOF Guarantees

I. Long-term Loans from CFDI

J. Resider I and II Programs

K. Youthstart

L. ECSC Article 54 Loans

M. ECSC Article 56(2)(b) Redeployment/Readaptation Aid

N. ERDF Grants

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for Usinor. For the period January 1, 2001, through December 31, 2001, we preliminarily find Usinor's net subsidy rate to be 1.11 percent. The calculations will be disclosed to the interested parties in accordance with section 351.224(b) of the regulations.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Bureau of Customs and Border Protection ("BCBP") to collect cash deposits of estimated

countervailing duties at the rate of 1.11 percent on the f.o.b. value of all shipments of the subject merchandise from Usinor and its affiliates that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

For companies that were not named in our notice initiating this administrative review, we will instruct BCBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Amended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils From France, Italy, and the Republic of Korea*, 64 FR 42923 (August 6, 1999). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

While the countervailing duty deposit rate for Usinor and its affiliates may change as a result of this administrative review, we have been enjoined from liquidating any entries of the subject merchandise after August 6, 1999. Consequently, we do not intend to issue liquidation instructions for these entries until such time as the injunction, issued on December 22, 1999, is lifted.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. See 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. 19 CFR 351.309(d)(1). Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, ordinarily will be held two days after the scheduled date for submission of rebuttal briefs. 19 CFR 351.310(c).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's

client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. 19 CFR 351.305(b).

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 5, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration

[FR Doc. 03-11620 Filed 5-8-03; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032003A]

Endangered Species; File No. 1189

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

ACTION: Issuance of permit modification.

SUMMARY: Notice is hereby given that Dr. James P. Kirk, USAE Waterways Experiment Station, CEWES-ER-A, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180-6199 has been issued a modification to scientific research Permit No.1189.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376; and, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2432; phone (727)570-5301; fax (727)570-5320.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Gene Nitta, (301)713-2289.

SUPPLEMENTARY INFORMATION: On February 25, 2002, and on July 18, 2002, notices were published in the **Federal Register** [(67 FR 8526) and (67 FR 47351), respectively] that modifications of Permit No. 1189, issued April 22, 1999 (64 FR 23281), had been requested by the above-named individual. The requested modifications have been granted under the authority of the Endangered Species Act of 1973, as