constitutes the ''regulatory authority.'' 30 CFR 700.5; see also 44 FR 14913 (March 13, 1979). In his role with respect to federal lands programs, the Secretary of the Interior is a regulatory authority subject to SMCRA sections 507(b)(9) and 510(b)(6)(C). Thus, when the Secretary makes VER determinations on federal lands, he is acting as the regulatory authority. See *National Wildlife Federation* v. *Lujan,* 950 F.2d 765, 767 (D.C.Cir. 1991), citing 30 CFR 700.5.

Mr. Helmick argues that he has an express right to strip mine the subject property because a boiler plate regulation incorporated into the deed of severance references ''stripping.'' But that reference explicitly relates to a separate tract of property, Tract 574–I, that is not an issue in this determination. The deed is silent as to ''stripping'' on Tract 574. If any inference can be drawn from the reference to stripping for one tract (574–I) and exclusion of the language for the second tract (574), it is that strip mining was expressly not intended for the second tract (574).

A property rights dispute presently exists between the U.S. Forest Service and Mr. Helmick. Mr. Helmick has alleged in the 1995 lawsuit, that he has the right to surface mine the property in question. The U.S. Forest Service contested that allegation. The trial court has not ruled on the issue of whether the requester has the property right to surface mine. Moreover, the U.S. Forest Service has reiterated its position, in a letter to OSM, that it is of the opinion that Mr. Helmick does not possess the right to surface mine in the Monongahela National Forest. (A.R. 2.352). As a result, the dispute remains unresolved in the record before OSM. And, for the reasons set out above, section 510(b)(6) precludes OSM from adjudicating that property rights dispute. Thus the record before OSM does not demonstrate whether, under applicable State law, Mr. Helmick holds the property right to surface mine tract 574.

Consequently, based on the record before it, OSM has reached the following conclusions in this matter: First, the written consent of the surface owner to surface mine was not provided, and is not in the record. Second, the 1939 deed which severed the coal rights did not expressly reserve the right to extract the coal on Tract 574 by surface mining methods. Finally; in light of the pending unresolved dispute concerning the property right to surface mine this coal, Mr. Helmick has not met his burden of demonstrating the property right to mine by the method intended. Therefore, OSM must also conclude that Mr. Helmick has not demonstrated VER to surface mine the property in question.[4]

III. Summary and Disposition of Comments

OSM received numerous comments opposed to VER requests pertinent to Tract 574, most of which were submitted in January and February 1990, in response to an application by Cecil E. Nichols. (A.R. 2.73). The protests focus on property rights, environmental concerns, and economic issues. In this decision, OSM is not responding to comments as to whether the coal holder has the necessary rights, because, as explained above, OSM cannot adjudicate the property rights dispute between the U.S. Forest Service and the current requester, Mr. Helmick. OSM is not addressing the remaining comments, because this decision cannot reach the takings analysis to which those comments may relate.

IV. Appeals

Any person who is or may be adversely affected by this decision may appeal to the Interior Board of Land Appeals under 43 CFR 4.1390. Notice of intent to appeal must be filed within 30 days after receipt of the determination by a person who has received a copy by certified mail or overnight delivery service; or within 30 days of the date of publication of this notice of decision in the **Federal Register** by any person who has not received a copy by certified mail or overnight delivery service.

Dated: December 9, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–32850 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–05–M

[4] Because the record does not demonstrate that Mr. Helmick holds the necessary property rights, OSM will not address the second stage of a takings analysis, the analysis of whether, as of 1977, application of the section 522(e) prohibition to Mr. Helmick's property rights would effect a compensable taking. (OSM notes that judicial case law concerning compensable takings would also require a threshold determination as to whether Mr. Helmick has demonstrated the property right to surface mine the coal. *See Lucas* v. *South Carolina Coastal Council,* 505 U.S. 1003, 1027 (1992).)

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–753–756 (Final)]

Certain Carbon Steel Plate From China, Russia, South Africa, and Ukraine

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury [2] by reason of imports from China, Russia, South Africa, and Ukraine of cut-to-length carbon steel plate,[3] provided for in provisions of headings 7208 through 7212 of the Harmonized Tariff Schedule (HTS) of the United States, [4] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[5]

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Crawford determines that an industry in the United States is materially injured by reason of the subject imports. Pursuant to section 735(b)(4)(A) of the Act (19 U.S.C. 1673d(b)(4)(A)), Commissioner Crawford makes a negative determination regarding critical circumstances.

[3] For purposes of these investigations, cut-to-length carbon steel plate is hot-rolled iron and nonalloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1,250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and nonalloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included in this definition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling''), such as products which have been bevelled or rounded at the edges. Excluded from this definition is grade X–70 plate.

[4] Cut-to-length carbon steel plate is currently covered by the following statistical reporting numbers of the HTS: 7208.40.3030; 7208.40.3060; 7208.51.0030; 7208.51.0045; 7208.51.0060; 7208.52.0000; 7208.53.0000; 7208.90.0000; 7210.70.3000; 7210.90.9000; 7211.13.0000; 7211.14.0030; 7211.14.0045; 7211.90.0000; 7212.40.1000; 7212.40.5000; and 7212.50.0000.

[5] The Commission further determines, pursuant to 19 U.S.C. 1673d(b)(4)(B), that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

Background

The Commission instituted these investigations effective November 5, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by Geneva Steel Co., Provo, UT, and Gulf States Steel, Inc., Gadsden, AL. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of cut-to-length carbon steel plate from China, Russia, South Africa, and Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 20, 1997 (62 FR 44287). The hearing was held in Washington, DC, on October 28, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on December 11, 1997. The views of the Commission are contained in USITC Publication 3076 (December 1997), entitled ''Certain Carbon Steel Plate from China, Russia, South Africa, and Ukraine: Investigations Nos. 731–TA–753–756 (Final).''

Issued: December 11, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–32950 Filed 12–16–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–358]

Notice of Commission Determination to Terminate the Investigation Based on Withdrawal of the Complaint; Vacatur of Alternative Findings; Denial of Respondents' Motion to Terminate; Denial of Motions for Leave to File Reply Briefs

In the matter of: Certain Recombinantly Produced Human Growth Hormones.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation on the basis of complainant's motion to withdraw its complaint and to vacate the alternative findings on the merits made by the presiding administrative law judge (ALJ) in his initial determination (ID) of November 29, 1994. The Commission has also determined to deny certain respondents' motion for termination of the investigation, as well as the various motions for leave to file reply briefs.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 29, 1993, based on a complaint filed by Genentech, Inc. of South San Francisco, California. 58 FR 50954. Six firms were named as respondents, *i.e.*, Novo Nordisk 2 A/S of Denmark; Novo Nordisk of North America, Inc. of New York; Novo Nordisk Pharmaceuticals, Inc. of New Jersey; ZymoGenetics, Inc. of Seattle, Washington (collectively, ''Novo''); Biotechnology General Corp. of New York; and Bio-Technology General Corp. (Israel) Ltd. (collectively, ''BTG'').

On November 29, 1994, the presiding ALJ issued an ID dismissing the complaint and terminating the investigation as a sanction for complainant's alleged misconduct in withholding certain documents during discovery. In the alternative, the ALJ reached the merits of the investigation, finding that there would have been a violation of section 337 based on the record as it closed on April 24, 1994, although noting that the record was incomplete because of complainant's conduct. On January 17, 1995, the Commission decided not to review the portion of the ID that dismissed the complaint as a sanction for discovery abuse, but took no position on the portion of the ID that found a violation of section 337 based on an incomplete record. 60 FR 4923 (January 25, 1995). Genentech appealed the Commission's determination to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). On August 14, 1997, the Federal Circuit reversed the Commission's decision to dismiss the investigation as a sanction and remanded the investigation to the Commission. *Genentech, Inc.* v. *USITC,* 43 USPQ2d 1722 (Fed. Cir. 1997). The court issued its mandate on September 4, 1997.

On September 22, 1997, Novo filed a motion to terminate the investigation with a finding of no violation based on certain findings adverse to Genentech that were made in the ALJ's ID of November 29, 1994, and on an unrelated intervening Federal Circuit decision concerning one of the patents asserted by Genentech in the Commission investigation. On September 30, 1997, BTG responded to Novo's motion that it had no objection to withdrawal of the complaint. On October 2, 1997, Genentech opposed Novo's motion and filed its own motion to terminate the investigation based on its withdrawal of its complaint. On October 4, 1997, the Commission investigative attorney (IA) opposed Novo's motion to terminate. On October 14, 1997, the IA supported Genentech's motion to withdraw. Between October 4 and October 30, 1997, the private parties filed four motions for leave to file additional briefs replying to the response briefs.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission interim rule 210.51, 19 CFR 210.51 (1994).

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Issued: December 11, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–32948 Filed 12–16–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act (''CAA'')

Notice is hereby given that a proposed Consent Decree in *United States* v. *Barber & Sons Tobacco Company, d.b.a. Barber & Sons Aggregates,* Civil Action No. 97–1540–CV–W–2, was lodged on November 25, 1997, with the United