

II. Description of the Proposed Rule Change

The Exchange proposes to increase the volume thresholds related to the options specialist shortfall fee⁵ and corresponding shortfall credit.⁶ Currently, the Exchange imposes a fee of \$0.35 per contract to be paid by the specialist trading any Top 120 Option if at least 10 percent of the total national monthly contract volume ("total volume") for such Top 120 Option is not affected on the Exchange in that month.⁷ The Exchange proposes to increase the requisite volume thresholds by 1 percent per quarter over each quarter of 2002. Thus, the minimum trading volume requirements for total volume in the Top 120 Options would be in excess of: 11 percent for the period January through March 2002; 12 percent for the period April through June 2002; 13 percent for the period July through September 2002; and 14 percent for the period October through December 2002.

In addition, the Exchange permits a corresponding shortfall credit of \$0.35 per contract to be earned toward previously imposed shortfall fee for each contract traded in excess of the current 10 percent volume threshold during a subsequent monthly time period.⁸ The specialist may apply for the shortfall credit when trading in an issue falls below the 10 percent volume threshold in one month and exceeds the threshold in a subsequent month. The Exchange also proposes to amend the related shortfall credit to correspond with the volume thresholds described above. Therefore, in order to qualify for the shortfall credit, specialists/specialist units must have total volume in the Top

120 Options (that otherwise qualify based on the 10 million contract volume requirement) in excess of: 11 percent for the period January through March 2002; 12 percent for the period April through June 2002; 13 percent for the period July through September 2002; and 14 percent for the period October through December 2002.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act⁹ and the rules and regulations thereunder applicable to a national securities exchanges.¹⁰ The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act,¹¹ which requires, among other things, that the rules of a national securities exchange be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Further, the Commission believes that the proposed fee may enhance inter-market competition by encouraging Phlx specialists to compete for order flow. In addition, Phlx specialists' efforts to maintain the requisite volume thresholds as outlined above may contribute to deeper, more liquid markets and narrower spreads.

The Exchange proposed to implement the proposed fees as of January 2, 2002. The Commission believes that it is reasonable for the Phlx to implement these fees retroactively to coincide with the New Year. Further, the Commission notes that it did not receive any comments on the proposed retroactive application of the fee and credit.

Furthermore, the Commission finds good cause for approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after notice of the publication in the **Federal Register**. Accelerated approval will permit the Exchange to invoice its January fees in a timely manner by the middle of February. In addition, the Commission received no comments on the proposed rule change and Amendment No. 1. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act¹² to approve the proposed rule change, as amended, on an accelerated basis.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-Phlx-2001-1115), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS-244]

WTO Dispute Settlement Proceeding Brought by Japan Regarding the Sunset Review of the Antidumping Duty Order Imposed by the United States on Corrosion-Resistant Carbon Steel Flat Products From Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on January 30, 2002, the United States received from Japan a request for consultations under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement) regarding certain aspects of the final determinations of both the United States Department of Commerce (DOC) and the United States International Trade Commission (ITC) in the full sunset review of Corrosion-Resistant Carbon Steel Flat Products from Japan issued on August 2, 2000, and November 21, 2000, respectively. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 12, 2002, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to japancrsteel@ustr.gov, or (ii) by mail, to Sandy McKinzy, Attn: Japan Corrosion-

⁵ See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-00-71).

⁶ See Securities Exchange Act Release No. 44892 (October 1, 2001), 66 FR 51487 (October 9, 2001) (SR-Phlx-2001-83).

⁷ The Exchange states that at present a Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month based on volume reflected by The Options Clearing Corporation ("OCC") and which was listed on the Exchange after January 1, 1997. The Exchange proposes to amend the definition of a Top 120 Option to include the top 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month based in volume reflected by OCC. The Phlx intends to continue to divide by two the total volume reported by OCC, which reflects both sides of an executed transaction, thus avoiding one trade being counted twice for purposes of determining overall volume. See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-00-71).

⁸ To be eligible for the shortfall credit, the option must trade in excess of 10 million contracts nationwide during the month in which the deficit occurs.

⁹ 15 U.S.C. 78f.

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(2).

¹³ *Id.*

¹⁴ 17 CFR 200.30-3(a)((12).

Resistant Steel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, with a confirmation copy sent electronically or by fax to (202) 395-3640.

FOR FURTHER INFORMATION CONTACT:

Katherine J. Mueller, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395-0317.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding (DSU). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by Japan

Japan alleges that the DOC and ITC final determinations in the full sunset review of Corrosion-Resistant Carbon Steel Flat Products from Japan issued on August 2, 2002, and November 21, 2000, respectively, are erroneous and based on WTO-inconsistent provisions of the Tariff Act of 1930 and related regulations. Japan points in particular to:

- the automatic initiation of the sunset review without sufficient evidence;
- the likelihood standard used in determining whether to revoke or terminate an order, including the "good cause" provision determining whether the DOC may consider other relevant factors;
- the use of original dumping margins without careful examination of dumping and injury;
- the determination of the likelihood of continued dumping on an order-wide basis rather than a company-specific basis;
- the treatment as "zero" of negative dumping margins in the average-to-average or transaction-to-transaction methodologies in calculating dumping margins in sunset reviews;

- the application of a *de minimis* standard of 0.5 percent in sunset reviews;
- the cumulative assessment of the volume and the effect of subject imports "from all countries" where such imports are likely to have a discernible adverse impact on the domestic industry.

Japan contends that these aspects of the final determinations are inconsistent with Articles VI and X of GATT 1994; Articles 2, 3, 5, 6 (including Annex II), 11, 12, and 18.4 of the Antidumping Agreement; and Article XVI:4 of the Agreement establishing the World Trade Organization.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English. Commenters should send either one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above, or transmit a copy electronically to japancrsteel@ustr.gov. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically or by fax to (202) 395-3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy. For any document containing business confidential information submitted by electronic transmission, the file name of the business confidential version should begin with the characters "BC", and the file name of the public version should begin with the characters "P". The "P" or "BC" should be followed by the name of the commenter. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential

in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy, or appropriately name the electronic file submitted containing such material; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS-244, Japan Corrosion-Resistant Steel Dispute) may be made by calling the USTR Reading Room at (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Christine Bliss,

Acting Assistant United States Trade Representative, for Monitoring and Enforcement.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

**Environmental Impact Statement/
Section 4(f) Evaluation: Prince
George's County, Maryland**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS)/Section 4(f) Evaluation will be prepared for a proposed transportation project in Prince George's County, Maryland.

FOR FURTHER INFORMATION CONTACT: Ms. Caryn Brookman, Environmental