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Sunset Reviews

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
Import Administration

FROM: Jeffrey A. May
Director
Office of Policy

SUBJECT: Issues and Decision Memo for the Expedited Sunset Reviews of the
Suspended Antidumping Duty Investigations on Cut-to-Length Carbon
Steel Plate from the People's Republic of China, the Russian Federation,
and South Africa; Final Results

Summary:

We have analyzed the substantive responses of interested parties in the expedited sunset reviews of the suspended antidumping duty investigations covering cut-to-length carbon steel plate ("CTL Steel Plate") from the People's Republic of China ("the PRC"), the Russian Federation ("Russia"), and South Africa. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum. Below is the complete list of the issues in these expedited sunset reviews for which we received substantive comments:

1. Likelihood of continuation or recurrence of dumping
 - A. Weighted-average dumping margin
 - B. Volume of imports

2. Magnitude of the margin likely to prevail

Margins from investigation

Background:

On September 3, 2002, the Department of Commerce (“the Department”) published in the Federal Register the notice of initiation of the five-year sunset reviews of the suspended antidumping duty investigations on CTL Steel Plate from the PRC, Russia, and South Africa.¹

The Department received Notices of Intent to Participate on behalf of Bethlehem Steel Corporation, United States Steel Corporation, IPSO Steel Inc. (“IPSO”), and Nucor Corporation (“Nucor”) (collectively “domestic interested parties”), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*.²

We received complete substantive responses from the domestic interested parties within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i).³ However, we did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to Section 751(c)(3)(B) of the Tariff Act of 1930 (“the Act”) , as amended, and 19 CFR 351.218(e)(1)(ii)(C) of the Department’s *Sunset Regulations*, the Department conducted expedited, 120-day, reviews of these suspended investigations.

¹ Notice of Initiation of Five-Year ("Sunset") Reviews, 67 FR 56268 (September 3, 2002).

² The domestic interested parties claimed interested party status under section 771(9)(C) of the Tariff Act of 1930 (“the Act”), as U.S. manufacturers and producers of a domestic like product.

³ Bethlehem Steel Corporation and the United States Steel Corporation have been active participants in the Russian and South African proceedings since the petition was filed. IPSO participated in the original investigation through questionnaire responses to the International Trade Commission. Nucor did not participate in the initial investigation. The domestic interested parties are committed to full participation in these five-year review.

History of the Suspended Investigations:

PRC

On December 3, 1996, the Department initiated an antidumping duty investigation on CTL Steel Plate from the PRC.⁴ On June 11, 1997, the Department preliminarily determined that CTL Steel Plate was being sold in the United States at less than fair value (“LTFV”).⁵ The Department and the Government of the PRC initialed a proposed agreement suspending this investigation on September 24, 1997. On October 24, 1997, the Department entered into an agreement with the Government of the PRC suspending this investigation.⁶ The Department completed the investigation and published its final determination of sales at LTFV in the Federal Register on November 20, 1997.⁷ On January 12, 1998, the Department amended the final determination of sales at LTFV. In the amended final determination, the Department calculated company-specific weighted average dumping margins ranging from 17.33 percent to 128.59 percent, and a PRC-wide rate of 128.59 percent.⁸

The Department has not conducted any administrative reviews since the conclusion of the

⁴ Initiation of Antidumping Duty Investigations: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, Ukraine, the Russian Federation, and the Republic of South Africa, 61 FR 64051 (December 3, 1996).

⁵ Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to- Length Carbon Steel Plate From The People's Republic of China, 62 FR 31972 (June 11, 1997).

⁶ Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61773 (November 19, 1997).

⁷ Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964 (November 20, 1997).

⁸ Amended Final Determination of Sales at Less Than Fair Value: Certain Cut-to- Length Carbon Steel Plate From the People's Republic of China, 63 FR 1821 (January 12, 1998).

suspension agreement. This suspension agreement remains in force.

Russia

On December 3, 1996, the Department initiated an antidumping duty investigation on CTL Steel Plate from Russia.⁹ On June 11, 1997, the Department preliminarily determined that CTL Steel Plate was being sold in the United States at LTFV.¹⁰ The Department and the Ministry of Foreign Economic Relations and Trade of the Russian Federation (“MINFER”) initialed a proposed agreement suspending this investigation on September 24, 1997. On October 24, 1997, the Department and MINFER signed the final suspension agreement.¹¹ The Department completed the investigation of sales at LTFV and published its final determination in the Federal Register on November 19, 1997.¹² In the final determination, the Department found a company-specific weighted-average dumping margin of 53.81 percent and a Russia-wide rate of 185.00 percent.

The Department has not conducted any administrative reviews since the conclusion of the suspension agreement. This suspension agreement remains in force.

South Africa

On December 3, 1996, the Department initiated an antidumping duty investigation on CTL

⁹ Initiation of Antidumping Duty Investigations: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, Ukraine, the Russian Federation, and the Republic of South Africa, 61 FR 64051 (December 3, 1996).

¹⁰ Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to- Length Carbon Steel Plate From the Russian Federation, 62 FR 31967 (June 11, 1997).

¹¹ Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From the Russian Federation, 62 FR 61780 (November 19, 1997).

¹² Final Determination of Sales at Less Than Fair Value: Certain Cut-to- Length Carbon Steel Plate from the Russian Federation, 62 FR 61787 (November 19, 1997).

Steel Plate from South Africa.¹³ On June 11, 1997, the Department preliminarily determined that CTL Steel Plate was being sold in the United States at LTFV.¹⁴ The Department, Iscor Ltd. (“Iscor”), and Highveld Steel and Vanadium Corporation Ltd. (“Highveld”) initialed a proposed agreement suspending this investigation on September 25, 1997. The final suspension agreement was signed by the Department, Iscor and Highveld, on October 24, 1997.¹⁵ The Department completed the investigation on CTL Steel Plate and published its final determination in the Federal Register on November 19, 1997.¹⁶ In its final determination, the Department found company-specific weighted-average dumping margins ranging from 26.01 percent to 50.87 percent, and a South Africa-wide rate of 38.36 percent.

The Department has not conducted any administrative reviews since the conclusion of the suspension agreement. This suspension agreement remains in force.

Discussion of the Issues:

In accordance with section 751(c)(1) of the Act, the Department conducted these sunset reviews to determine whether termination of these suspended antidumping duty investigations would likely lead to continuation or recurrence of dumping.

Section 752(c) of the Act provides that, in making this determination, the Department shall

¹³ Initiation of Antidumping Duty Investigations: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, Ukraine, the Russian Federation, and the Republic of South Africa, 61 FR 64051 (December 3, 1996).

¹⁴ Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 31963 (June 11, 1997).

¹⁵ Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61751 (November 19, 1997).

¹⁶ Final Determination of Sales at Less Than Fair Value: Certain Cut-to- Length Carbon Steel Plate From South Africa, 62 FR 61731 (November 19, 1997).

consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the suspended antidumping duty investigation. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the International Trade Commission (“the Commission”) the magnitude of the margin of dumping likely to prevail if the suspended investigations were terminated.

Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments:

The domestic interested parties argue that termination of the suspended investigations on CTL Steel Plate from the PRC, Russia, and South Africa, would likely lead to a continuation or recurrence of dumping in the United States by the Chinese, Russian, and South African manufacturers, producers, and exporters.¹⁷

PRC

The domestic interested parties point out that the Department, in its final determination of sales at LTFV, found significant company-specific weighted-average dumping margins and a PRC-wide rate of 128.59 percent.¹⁸ In addition, domestic interested parties argue that import volumes of CTL Steel Plate declined significantly after the issuance of the suspension agreement. Citing to statistics from the

¹⁷ See Bethlehem Steel Corporation, United States Steel Corporation, October 3, 2002, Substantive Responses, at 4-5 and 5, and IPSCO Steel Inc. and Nucor Corporation, October 2, 2002, Substantive Response, at 3.

¹⁸ See Bethlehem Steel Corporation, United States Steel Corporation, October 3, 2002, Substantive Response at 9.

Department's Bureau of the Census, Import for Consumption, IM-145, domestic interested parties note that import volumes for 2001 declined 67.70 percent compared to import volumes in 1996, the year preceding the suspension agreement.¹⁹ In 2001, import volumes were almost 45 percent below the quota limits allotted under the suspension agreement.²⁰ In the first half of 2002, imports continued to decrease to 19,700 tons.²¹ Therefore, pursuant to the statute and the Department's policy, the domestic interested parties assert that the Department should find that termination of the suspended investigation would likely lead to a recurrence of dumping by Chinese manufacturers, producers, and exporters.

Russia

The domestic interested parties point out that the Department, in its final determination of sales at LTFV, found a weighted-average dumping margin of 53.81 percent for Severstal and a Russia-wide rate of 185.00 percent.²² With respect to import volumes, the domestic interested parties claim that since the issuance of the suspension agreement import volumes have declined significantly from their 1996 peak and have remained below pre-agreement volumes.²³ For example, in 1996 imports totaled 252,399 tons. In 2001, import volumes decreased to 79,071 tons and to 12,929 tons during the first

¹⁹ See Bethlehem Steel Corporation and United States Steel Corporation, October 3, 2002, Substantive Response, at 12, and Figure 1.

²⁰ Id.

²¹ See IPSCO Steel Inc. and Nucor Corporation, October 2, 2002, Substantive Response, at 3.

²² See Bethlehem Steel Corporation and United States Steel Corporation, October 3, 2002, Substantive Response, at 7.

²³ See IPSCO Steel Inc. and Nucor Corporation, October 2, 2002, Substantive Response, at 3-4.

half of 2002.²⁴ In further support of their assertion that termination of the suspension agreement would likely lead to a continuation or recurrence of dumping, the domestic interested parties point to factors such as the Russian exchange rate, Russian production capacity and capacity utilization, and Russian pricing for steel.²⁵ For these reasons, the domestic interested parties assert that termination of the suspension agreement would lead to the continuation or recurrence of dumping by Russian manufacturers, producers and exporters.

South Africa

The domestic interested parties point out that the Department, in its final determination of sales at LTFV, calculated dumping margins of 26.01 percent for Highveld and 50.87 percent for Iscor.²⁶ With respect to import volumes, domestic interested parties argue that shipments of CTL Steel Plate into the United States have plummeted since the acceptance of the suspension agreement.²⁷ In 1996, the year preceding conclusion of the suspension agreement, import volumes totaled 81,544 tons. Since 1996, imports have decreased to as little as 10,993 tons in 2001.²⁸ They argue that this is sufficient basis for the Department to determine that South African producers are likely to continue dumping if the suspension agreement were terminated.

²⁴ Id.

²⁵ See Bethlehem Steel Corporation and United States Steel Corporation, October 3, 2002, Substantive Response, at 9-12.

²⁶ Id. at 10.

²⁷ See Bethlehem Steel Corporation and United States Steel Corporation, October 3, 2002, Substantive Response, at 10-11, Figure 1-3, and Exhibit 1-3, and IPSCO Steel Inc. and Nucor Corporation, October 2, 2002, 3-4 and attachment Cut-to-Length Value and Volume of Imports for 1995-2002.

²⁸ See Bethlehem Steel Corporation and United States Steel Corporation, October 3, 2002, Substantive Response, at Figure 1.

Department's Position:

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the SAA, H. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt.1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood are made on an order-wide basis.²⁹ In addition, the Department normally will determine that termination of a suspended antidumping investigation is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the suspension agreement, (b) imports of the subject merchandise ceased after the issuance of the suspension agreement, or (c) dumping was eliminated after the issuance of the suspension agreement and import volumes for the subject merchandise declined significantly.³⁰

Section 751(c)(4)(B) of the Act provides that the Department shall determine that termination of a suspended investigation is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In these instant reviews, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

As discussed above, in the Discussion of the Issues section of these reviews, in making this determination, the Department will consider the weighted-average dumping margins determined in the

²⁹ See section II.A.2 of the Sunset Policy Bulletin.

³⁰ See section II.A.3 of the Sunset Policy Bulletin.

investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the suspended antidumping duty investigations.

In CTL Steel Plate from the PRC, Russia, and South Africa, the Department calculated weighted-average dumping margins above *de minimis* levels in the investigations. Since the issuance of the suspension agreements, the Department has never calculated any margin that would establish that the PRC, Russia, and South Africa has sold CTL to the United States at LTFV. The case history of these suspended investigations show that the margins from the investigations have remain unchanged, and that no parties have requested an administrative review.

For purposes of this sunset review we considered the volume of imports of the subject merchandise for the period before and the period after the issuance of the suspended investigations. Import statistics data provided by the domestic interested parties and the Department's U.S. Census of the Bureau, IM-145 reports, demonstrate that import volumes from the PRC, Russia, and South Africa declined significantly following the issuance of the suspension agreements. Further, import volumes remain below pre-agreement levels.

Because the Department normally determines that termination of a suspended dumping investigation is likely to lead to continuation or recurrence of dumping where import volumes declined significantly after the issuance of the suspension agreement, respondent interested parties have waived their right to participate in these reviews before the Department, and absent argument and evidence to the contrary, we find that it is likely that termination of the suspension agreements on CTL Steel Plate from the PRC, Russia, and South Africa, will lead to a continuation or recurrence of dumping by the PRC, Russian, and South African manufacturers, producers, and exporters of CTL Steel Plate.

As noted in the *Sunset Regulations*, at section 351.218(e)(2)(ii), the Department will normally consider other factors only where it conducts a full review. Because we conducted an expedited review based on lack of respondent participation, we have not considered domestic interested parties arguments related to factors other than previously calculated margins and import volumes.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments:

The domestic interested parties recommend that, consistent with the Sunset Policy Bulletin, the Department should provide the Commission with the margins from the original investigations because these are the only margins calculated in these proceedings and no administration reviews have been conducted throughout the history of the suspension agreements.

Department's Position:

In the Sunset Policy Bulletin, the Department stated that it will normally provide the Commission with the margin that was determined in the final determination of the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the suspension agreement was implemented, the Department normally will provide a margin based on the “all others” rate from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of a suspension agreement in place.³¹

The Department, in the original investigations on CTL Steel Plate from the PRC, Russia, and South Africa, calculated weighted-average dumping margins above *de minimis* levels for individual companies and an “all others” rate. These margins have remained unchanged since the suspended

³¹ See section II.B.1 of the Sunset Policy Bulletin.

investigations.

Consistent with the Sunset Policy Bulletin, the Department finds that the rates from the original investigation are the most probative of Chinese, Russian, and South African manufacturers, producers, and exporters of CTL Steel Plate if the suspension agreements were terminated. Accordingly, the Department will report to the Commission the company-specific and “all-others” rates from the original investigation as the margins likely to prevail if the suspension agreements were terminated.

Final Results of Reviews:

We determine that termination of the suspended antidumping duty investigations on CTL Steel Plate from the PRC, Russia, and South Africa, would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

| <u>Chinese Manufacturers/Producers/Exporters</u> | <u>Margin (percent)</u> |
|---|-------------------------|
| Anshan (AISCO/Anshan International/Sincerely Asia Ltd.) | 30.68 |
| Baoshan (Bao/Baoshan International Trade Corp./Bao Steel Metals Trading Corp.)..... | 30.51 |
| Liaoning..... | 17.33 |
| Shanghai Pudong | 38.16 |
| WISCO (Wahine/International Economic and Trading Corp./Cheerwu Trader Ltd.) | 128.59 |
| PRC-Wide | 128.59 |

| <u>South African Manufacturers/Producers/Exporters</u> | <u>Margin (percent)</u> |
|--|-------------------------|
| Highveld | 26.01 |
| Iscor | 50.87 |
| All Others..... | 38.36 |

| <u>Russian Manufacturers/Producers/Exporters</u> | <u>Margin (percent)</u> |
|--|-------------------------|
| Severstal | 53.81 |
| Russia-Wide | 185.00 |

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of reviews in the Federal Register.

Faryar Shirzad
Assistant Secretary
for Import Administration

(Date)

