

TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Paul Piquado
Deputy Assistant Secretary
for Policy and Negotiations

RE: Issues and Decision Memorandum for the Final Results of the Expedited
Sunset Review of the Agreement Suspending the Antidumping Duty Investigation
on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the
Russian Federation

Summary

We have analyzed the substantive response of the domestic interested parties in the sunset review of the Agreement Suspending the Antidumping Investigation of Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation (Suspension Agreement). We recommend that you approve the positions described in the **Discussion of the Issues** section of this memorandum. Below is the complete list of the issues in this expedited sunset review for which we received comments from the domestic interested parties. Respondent interested parties did not comment.

1. Likely Effects of Termination of the Suspension Agreement and Underlying Investigation
2. Magnitude of Margin Likely to Prevail if the Suspended Investigation is Terminated

History of the Suspension Agreement

On July 12, 1999, the Department of Commerce (the Department) and the Ministry of Trade of the Russian Federation entered into an agreement suspending the antidumping duty (AD) investigation on hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from the Russian Federation.¹ Upon the request of the petitioners, the investigation was continued and the Department made an affirmative final determination of sales at less than fair value.² Likewise, the International Trade Commission (ITC) continued its investigation and made an

¹Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, 64 FR 38642 (July 19, 1999) (Suspension Agreement).

² Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, 64 FR 38626 (July 19, 1999).

affirmative determination of material injury to an industry in the United States.³ The Suspension Agreement set an annual export limit and established quarterly reference prices for imports of Russian hot-rolled steel.

On September 9, 2004, in the first sunset review of the Suspension Agreement, the Department determined that termination of the suspended AD investigation underlying the Suspension Agreement on hot-rolled steel from Russia would likely lead to continuation or recurrence of dumping.⁴ On May 5, 2005, the ITC determined that termination of the Suspension Agreement would likely lead to continuation or recurrence of material injury to the industry in the United States within a reasonably foreseeable time.⁵ Accordingly, on June 3, 2005, the Department published its notice of continuation of the suspended AD investigation on hot-rolled steel from Russia.⁶

On July 22, 2004, and August 31, 2005, pursuant to requests from the Russian government, the Department agreed to add certain new grades of merchandise to its reference price calculation.⁷ There have been no other related findings or rulings (e.g., changed circumstances reviews, scope rulings, or duty absorption reviews) since the simultaneous publication of the final determination of sales at less-than fair-value and the Suspension Agreement. The Suspension Agreement remains in effect.

Background

On April 1, 2010, the Department published the notice of initiation of the second five-year sunset review (Second Sunset Review) of the suspended AD investigation on hot-rolled steel from Russia⁸. In accordance with 19 CFR 351.218(d)(1)(i), the Department received timely notices of intent to participate in the Second Sunset Review on April 9, 2010 from Nucor Corporation and

³ Certain Hot-Rolled Steel Products From Brazil and Russia, 64 FR 46951 (August 27, 1999).

⁴ Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation; Final Results of Expedited Sunset Review of Suspended Antidumping Duty Investigation, 69 FR 54633 (September 9, 2004) (First Sunset Review).

⁵ See Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, Japan, and Russia, Investigation No. 701-TA-384 and 731-TA-806-808 (Review), 70 FR 23886 (May 5, 2005).

⁶ Continuation of Suspended Antidumping Duty Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation, 70 FR 32571 (June 3, 2005).

⁷ See Letter from Joseph A. Spetrini, Deputy Assistant Secretary, to Mr. Anatoliy Godakov, Acting Trade Representative of the Russian Federation in the United States (July 22, 2004) and Letter from Ronald K. Lorentzen, Director, Office of Policy, Import Administration, to Mr. Anatoliy Godakov, Deputy Trade Representative of the Russian Federation in the United States (August 31, 2005), respectively.

⁸ Initiation of Five-Year (Sunset) Review, 75 FR 16437 (April 1, 2010) (Notice of Initiation).

the United States Steel Corporation; on April 12, 2010, from Gallatin Steel, SSAB North America Division, and Steel Dynamics, Inc.; and on April 15, 2010, from ArcelorMittal USA, Inc. All parties claimed domestic interested party status under section 771(9)(C) of the Act, stating they are manufacturers in the United States of the domestic like product. In addition, these same domestic interested parties assert that they are not related to a foreign producer/exporter and are not importers, or related to importers, of the subject merchandise. On May 24, 2010, the Ministry of Economic Development of the Russian Federation submitted a letter of appearance. However, we received no notices of intent to participate from the Ministry of Economic Development of the Russian Federation or from any respondent interested parties with respect to this proceeding.

On May 3, 2010, all aforementioned domestic interested parties jointly submitted a timely substantive response within the deadline specified in 19 CFR 351.218(d)(3)(i). After examining the substantive response from the domestic interested parties, the Department determined that the response was adequate, consistent with the requirements of 19 CFR 351.218(e).⁹ Pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(e)(1)(ii)(C)(2), because no respondent interested party provided a notice of intent to participate, the Department determined to conduct an expedited (120-day) sunset review of the suspended AD investigation on hot-rolled steel from Russia.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted a sunset review to determine whether termination of the AD suspended investigation would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both 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 acceptance of the antidumping duty suspension agreement. In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of dumping likely to prevail if the suspended AD investigation were terminated. Below we address the comments of the interested parties.

⁹ See Memorandum from Anne D'Alauro, Senior Policy Analyst, Office of Policy, Import Administration to Sally C. Gannon, Director for Bilateral Agreements, Office of Policy, Import Administration, regarding "Sunset Review of the Agreement Suspending the Antidumping Investigation of Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation: Adequacy Determination" (May 14, 2010). See also Letter from Barbara E. Tillman, Director, Office 6, AD/CVD Operations, Import Administration, to Ms. Catherine DeFilippo, Director, Office of Investigations, International Trade Commission (May 21, 2010).

1. Likely Effects of Termination of the Suspension Agreement and Underlying Investigation

Interested Party Comments

The domestic interested parties review the Department's calculation of an AD rate of 73.59 percent for JSC Severstal (Severstal) and a Russia country-wide rate of 184.56 percent in its final determination of sales of less than fair value. They comment that, in its First Sunset Review, the Department concluded that dumping would likely recur at these rates if the Suspension Agreement were terminated.

The domestic interested parties note that, within the context of suspension agreements, the Department has compared post-agreement imports to both pre-petition import levels and the quota levels set by a suspension agreement as in its 2003 sunset review of cut-to-length (CTL) carbon steel plate from Ukraine.¹⁰ In that sunset review, the Department concluded that import "volumes significantly below Agreement quota levels indicate that producers could not sell in adequate volumes at established reference prices."¹¹ According to domestic interested parties, the adoption of the Suspension Agreement on hot-rolled steel from Russia in 1999 had an immediate and drastic effect on imports of these products. From an import volume of 3.8 million short tons in 1998, the last year before the Suspension Agreement, imports fell by 99.6 percent in the following year. Domestic interested parties argue that this clear contrast between pre-agreement and post-agreement import levels strongly indicates that subject merchandise volumes "declined significantly"¹² and that the Suspension Agreement checked the dumping behavior of the Russian manufacturers. The domestic interested parties further argue that import patterns during the life of the Suspension Agreement confirm the likelihood that Russian producers would resume or continue dumping if the Suspension Agreement were terminated. They state that the reference prices have limited Russian imports to levels far below those prevailing before the petition and the Suspension Agreement. In fact, they continue, imports have never risen above one-quarter of the pre-agreement level. Indeed, import volumes fell within almost exactly the same range during the Second Sunset Review period for hot-rolled steel that the Department found warranted continuation of the suspension agreement in the second sunset review of Russian steel plate (between one and 28 percent of pre-agreement import levels).¹³ In fact, only in 2004 did non-dumped imports manage to reach the export limit (or slightly exceed it pursuant to the carry over provision of the Suspension Agreement). Most recently, imports of a mere

¹⁰ Final Results of Five-Year Sunset Review of Suspended Antidumping Duty Investigation on Certain Cut-to-Length Carbon Steel Plate from Ukraine, 68 FR 24434 (May 7, 2003).

¹¹ Id., Issues and Decision Memorandum at 7.

¹² See May 3, 2010 submission by domestic interested parties at 7.

¹³ First Sunset Review and Issues and Decision Memorandum at 5.

1,708 short tons during 2009 indicate that imports were “virtually impossible”¹⁴ to make at the prevailing reference prices.

No respondent party participated or provided comments in this Second Sunset Review.

Department’s Position:

In accordance with section 752(c)(1) of the Act, in a sunset review, the Department shall determine whether termination of a suspended investigation would be likely to lead to a continuation or recurrence of sales of the subject merchandise at less than fair value. In making its determination, the Department shall consider: (a) the weighted-average dumping margins determined in the investigation and subsequent reviews, and (b) the volume of imports of the subject merchandise for the period before, and the period after, acceptance of the suspension agreement.

Further, drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreement Act (“URAA”), specifically the Statement of Administrative Action (“SAA”), H.R. 29 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’s determinations of likelihood will be made on an order-wide basis. In addition, the Department indicated that it will normally determine that termination of a suspended dumping 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 acceptance of a suspension agreement and import volumes for the subject merchandise declined significantly.¹⁵ The Department also recognizes that in the context of a sunset review of a suspended investigation, the data relevant to weighted-average dumping margins and import volumes may not be conclusive in determining the likelihood of future dumping. Consequently, the Department may be more likely to take other factors into consideration, provided good cause is shown.

With respect to dumping margins, the Department calculated weighted-average dumping margins in its original investigation of 73.59 percent for Severstal and a Russia-wide rate of 184.56 percent. No more recently calculated margins exist. As such, we find the weighted-average dumping margins determined in the suspended investigation demonstrative of the

¹⁴ See May 3, 2010 submission by domestic interested parties at 8.

¹⁵ See, e.g., Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at comment 1; see also, Pure Magnesium in Granular Form from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 5417 (February, 6, 2007), and accompanying Issues and Decision Memorandum at comment 1.

behavior of Russian manufacturers, producers, and exporters without the discipline of a suspension agreement in place.

Regarding import levels, import data released by the ITC indicates that import volumes have remained at levels below those found prior to the acceptance of the Suspension Agreement. The Department found that, in the five years following the September 9, 2004 completion of its First Sunset Review, imports remained significantly lower than in 1998, the year prior to the domestic producers' petition. Indeed, imports from 2005 through 2009 ranged from less than 1 to 21 percent of pre-petition import volumes.¹⁶ Furthermore, imports for the same period have not reached yearly export limits per the Suspension Agreement. Data submitted by domestic interested parties corresponds with this trend.¹⁷

Based on this information, the Department finds that the continued decrease in export volumes after the issuance of the Suspension Agreement is highly probative of the likelihood of continuation or recurrence of dumping. Declining import volumes, as discussed in section 752(c)(1) of the Act, the SAA at 890, and the House Report at 63-64, after the issuance of an agreement may provide a strong indication that, absent the agreement, dumping would be likely to continue or recur if the suspension agreement were terminated.

Therefore, given the level of dumping found in the original investigation, the continuation of the Suspension Agreement in 2004, and the significant decline in import volumes during the five year period comprising the Second Sunset Review (2005-2009) relative to import levels prior to the acceptance of the Suspension Agreement, we find that dumping is likely to continue or recur if the Suspension Agreement and underlying investigation were terminated.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments:

In their substantive response, the domestic interested parties recommend that, if the Suspension Agreement covering hot-rolled steel from Russia ends, the dumping margin likely to prevail would be 73.59 percent for Severstal and 184.56 percent for all other Russian producers.

As noted above, no respondent party participated or provided comments in this sunset review.

¹⁶ See Appendix 1 with USITC Dataweb import statistics.

¹⁷ See May 3, 2010 submission by domestic interested parties at 7.

Department's Position:

Pursuant to Section 752(c)(3), the Department shall provide to the ITC the magnitude of the margin likely to prevail if the suspended investigation is terminated. Normally the Department will provide to the ITC the company-specific margin from the original investigation for each company.¹⁸ For companies not specifically investigated, or for companies that did not begin shipping until after an order was issued, the Department normally will provide a margin based on the "all-others" (or "Russia-wide") rate from the investigation.

In the original investigation, the Department calculated a dumping margin for Severstal, a Russian manufacturer, producer, and exporter of Russian hot-rolled steel, as well as a "Russia-wide" rate of 184.56 percent. The calculated margins from the original investigation are the only calculated rates that reflect the behavior of Russian producers and exporters without the discipline of the Suspension Agreement in place. Furthermore, no respondent party provided information in this Second Sunset Review that would update or invalidate the calculated margins from the investigation. Therefore, pursuant to section 752(c) of the Act, the Department will report to the ITC the company-specific rate and "Russia-wide" rate from the investigation as contained in the Final Results of Expedited Review section of this decision memorandum.

Final Results of Expedited Review:

We determine that termination of the Suspension Agreement and underlying antidumping duty investigation on hot-rolled steel products from Russia would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

¹⁸See Persulfates from the People's Republic of China: Notice of Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at comment 2.

Manufacturer/producer/ exporter	Weighted- average margin percentage
Severstal	73.59
Russia-wide	184.56

Recommendation:

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

Agree _____

Disagree _____

 Ronald K. Lorentzen
 Deputy Assistant Secretary
 for Import Administration

 Date

Appendix 1

HR Ref Prices: First Unit of Quantity by First Unit of Quantity for Russia

U.S. Imports for Consumption

Annual Data 1998 (Pre-Petition)

Quantity Description	1998
	<i>In Actual Units of Quantity</i>
kilograms	3,467,777,571

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.

HR Ref Prices: First Unit of Quantity by First Unit of Quantity for Russia

U.S. Imports for Consumption

Annual + Year-To-Date Data from Jan - Apr

Quantity Description	2005	2006	2007	2008	2009	2009 YTD	2010 YTD
	<i>In Actual Units of Quantity</i>						
kilograms	271,500,316	716,037,569	123,643,963	69,332,570	1,549,700	1,549,700	25,703,115
Percent compared with pre-petition volumes	7.83%	20.65%	3.57%	2.00%	0.04%	0.04%	0.74%

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.