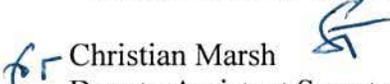




A-821-809  
Sunset Review  
**Public Document**  
E&C Office VI: DC

August 30, 2016

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM:  Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

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

### Summary

In the sunset review of the antidumping duty order covering certain hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from the Russian Federation (Russia),<sup>1</sup> AK Steel Corporation, ArcelorMittal USA, LLC, Nucor Corporation, SSAB Enterprises LLC, and United States Steel Corporation (collectively, domestic interested parties) submitted an adequate substantive response. No respondent interested party submitted a substantive response. In accordance with our analysis of the domestic interested parties' substantive responses, we recommend you approve the positions described in the Discussion of the Issues section of this memorandum. The following is a complete list of issues in the sunset review:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margin likely to prevail.

### Background

On May 2, 2016, the Department of Commerce (the Department) published the notice of initiation of the sunset review of the antidumping duty order on hot-rolled steel from Russia, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>2</sup> On May 16, 2016

<sup>1</sup> See *Termination of the Suspension Agreement on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, Rescission of 2013-2014 Administrative Review, and Issuance of Antidumping Duty Order*, 79 FR 77455 (December 24, 2014) (*Russia Order*).

<sup>2</sup> See *Initiation of Five-Year ("Sunset") Review*, 81 FR 26209 (May 2, 2016) (*Sunset Initiation*).



and May 17, 2016, the Department received timely and complete notices of intent to participate in the sunset review from, United States Steel Corporation, SSAB Enterprises LLC, Steel Dynamics, Inc., ArcelorMittal USA, LLC, AK Steel Corporation, and Nucor Corporation (collectively, domestic interested parties). On June 1, 2016, pursuant to 19 CFR 351.218(d)(3), domestic interested parties filed timely and adequate substantive responses within 30 days after the date of publication of the *Sunset Initiation*.<sup>3</sup> The Department did not receive timely substantive responses from any respondent interested party with respect to the order on hot-rolled steel from Russia. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the antidumping duty order on hot-rolled steel from Russia.

### **Scope of the Order**

For the scope of the order, *see* the accompanying *Federal Register* notice.

### **History of the Order on Hot-Rolled Steel from Russia**

Since the publication of the previous sunset review,<sup>4</sup> the Department conducted an administrative review of the Russian hot-rolled steel suspension agreement, which covered the period July 1, 2010, through June 30, 2011.<sup>5</sup>

On July 10, 2014, domestic interested parties filed a submission alleging that the revised agreement did not prevent price suppression or undercutting of price levels of domestic producers by import of hot-rolled steel from Russia, and requested the Department to terminate the *Agreement* and impose antidumping duties on imports of hot-rolled steel from Russia. On August 29, 2014, the Department initiated an administrative review of the *Agreement*, covering the period of July 1, 2013, through June 30, 2014, and on October 20, 2014, the Department notified the Economy Ministry of the Russian Federation of its decision to terminate the *Agreement* effective December 19, 2014. As a result of the termination of the *Agreement*, the Department rescinded the 2013-2014 administrative review of the *Agreement* and issued the *Russia Order*.<sup>6</sup>

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<sup>3</sup> *See* Letter from AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, Steel Dynamics, Inc., and United States Steel Corporation to the Department regarding “Five-Year (“Sunset”) Review of the Antidumping Duty Order on Certain Hot-Rolled Carbon, Steel Flat Products from the Russian Federation – Domestic Interested Parties’ Substantive Response to Notice of Initiation,” dated June 1, 2016 (Domestic Interested Parties’ Substantive Response).

<sup>4</sup> *See Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation; Final Results of the Expedited Review of Antidumping Duty Suspended Investigation*, 75 FR 47263 (August 5, 2010).

<sup>5</sup> *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation; Preliminary Results of Administrative Review of the Suspension Agreement*, 77 FR 32513 (June 1, 2012) and *Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation; 2010-2011; Final Results of Administrative Review and Revision of Agreement Suspending Antidumping Duty Investigation*, 77 FR 72820 (December 6, 2012) (*Russia Hot-Rolled Final*). *See also Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 64 FR 38642 (July 19, 1999) (*Agreement*).

<sup>6</sup> *See Russia Order*.

In December 2015, the Department published a notice of opportunity to request an administrative review of the *Russia Order*. On February 9, 2016, the Department initiated an administrative review of JSC Severstal for the period December 19, 2014, through November 30, 2015.<sup>7</sup>

To date, the Department has not made any duty absorption findings, scope clarifications, circumvention determinations or changed circumstances determinations regarding hot-rolled steel from Russia.<sup>8</sup>

## **Discussion of the Issues**

### *Legal Framework*

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to a 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 periods before, and the periods after, the issuance of the antidumping duty order.

As explained in the *Statement of Administrative Action* (SAA) accompanying the Uruguay Round Agreements Act, the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.<sup>9</sup>

Alternatively, the Department normally will determine that revocation of an antidumping duty order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.<sup>10</sup> In addition, as a base period of import volume comparison, it is the Department's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew comparison.<sup>11</sup>

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<sup>7</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 6832 (February 9, 2016).

<sup>8</sup> On November 15, 2010, domestic interested parties requested that the Department conduct a changed circumstances review of the suspension agreement on hot-rolled steel from Russia to investigate whether the *Agreement* should be revised to reflect Russia's change from a non-market economy to a market economy country. The Department determined not to conduct a changed circumstances review because it concluded that a changed circumstances review was not the appropriate vehicle for considering domestic interested parties' request to consider whether to modify the terms of the suspension agreement.

<sup>9</sup> See SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90; see also, *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.

<sup>10</sup> See *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin*).

<sup>11</sup> See, e.g., *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

Further, section 752(c)(3) of the Act states that the Department shall provide to the International Trade Commission (ITC) the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the margin(s) from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.<sup>12</sup> However, the Department may use a rate from a more recent review, if this rate may be more representative of a company's behavior in the absence of an order (*e.g.*, where a company increases dumping to maintain or increase market share with an order in place).<sup>13</sup>

In February 2012, the Department announced that it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization (WTO)-inconsistent.<sup>14</sup> In the *Final Modification for Reviews*, the Department stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.<sup>15</sup> The Department further stated that apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”<sup>16</sup>

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of “zero or *de minimis* shall not by itself require” the Department to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at less-than-fair-value (LTFV). Our analysis of the comments submitted by the domestic interested parties follows.

## *Analysis*

### 1. Likelihood of Continuation or Recurrence of Dumping

#### Domestic Interested Party Comments

Domestic interested parties argue that revocation of the antidumping duty order on hot-rolled steel from Russia would be likely to lead to the continuation or recurrence of sales at LTFV by margins that are at least equivalent to those found in the original investigation—up to 184.56

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<sup>12</sup> See SAA at 890 and *Sunset Policy Bulletin* at section II.B.1. See, *e.g.*, *Persulfates From the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>13</sup> See SAA at 890-91; *Sunset Policy Bulletin* at section II.B.2.

<sup>14</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Anti-dumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

percent.<sup>17</sup> According to domestic interested parties, the Department has completed only one administrative review, where no new margins were calculated, but where the Department reviewed whether respondents were in compliance with the terms of the *Agreement*. Therefore, domestic parties argue, the dumping margins established in the *Investigation Determination* continue to exist for all shipments of the subject merchandise.

According to domestic interested parties, the *Final Modification for Reviews* states that the Department can continue to rely on the original dumping margins because they were based on either partial or total adverse facts available.<sup>18</sup> Domestic interested parties argue that the 184.56 percent margin in the *Investigation Determination* was based on the highest alleged margin in the petition, and there is no evidence that the margin calculated for JSC Severstal, which was described as a partial facts available rate in the *Investigation Determination*, is inconsistent with the *Final Modification for Reviews*.<sup>19</sup> Citing the *Policy Bulletin*, domestic interested parties conclude that the continued existence of significant dumping rates since the implementation of the *Agreement* and the *Russia Order* is indicative that dumping is likely to continue or recur if the *Russia Order* were revoked.<sup>20</sup>

Regarding import volumes, domestic interested parties argues that after the LTFV investigation was completed and the *Agreement* was adopted, imports of hot-rolled steel from Russia decreased immediately and significantly. Domestic interested parties state that after the *Agreement* was signed, imports of Russian hot-rolled steel plummeted by 99.6 percent from 3.8 million short tons in 1998 to 14,612 short tons in 1999.<sup>21</sup> Domestic interested parties add that import volumes remained low, with imports for 2010 through 2016 averaging 264,671 short tons, which is a small fraction (seven percent) of the 3.8 million tons reached in 1998.<sup>22</sup> Further, according to domestic interested parties, after the *Agreement* was terminated in December 2014 and the *Russia Order* was issued, subject imports dropped from 939,490 short tons to 18,079 short tons.<sup>23</sup> Domestic interested parties argue that if the *Russia Order* were revoked, the volume of subject imports would increase dramatically because Russian producers and exporters who are currently subject to large margins would resume shipping significant volumes of hot-rolled steel to the United States at dumped prices.

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<sup>17</sup> See 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) (*Investigation Determination*).

<sup>18</sup> See *Final Modification for Reviews* at 8103.

<sup>19</sup> See *Investigation Determination*.

<sup>20</sup> See *Policy Bulletin* at 18872.

<sup>21</sup> See Domestic Interested Parties' Substantive Response at 17. We note that domestic interested parties relied on the Official Import Statistics of the U.S. Department of Commerce for their data analysis rather than ITC's Trade Dataweb.

<sup>22</sup> *Id.* at 18.

<sup>23</sup> *Id.* at 17.

## Department's Position

As explained in the Legal Framework section above, the Department's determination concerning whether revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping is based, in part, upon guidance provided by the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, the SAA; House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report); and Senate Report, S. Rep. No. 103-412 (1994) (Senate Report)). Consistent with the SAA, the Department will make its likelihood determination on an order-wide basis.<sup>24</sup> Further, when determining whether revocation of the order would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

As part of its determination of whether revocation of an antidumping order is likely to lead to the continuation or recurrence of dumping, the Department will examine whether: (a) dumping continued at any level above *de minimis* after the issuance of the order or suspension agreement; (b) imports of the subject merchandise ceased after the issuance of the order or the suspension agreement; and (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined.<sup>25</sup>

In the instant review, for the reasons stated below, we find that revocation of the *Russia Order* would likely result in the continuation or recurrence of dumping in the United States.

Pursuant to 752(c)(1)(B) of the Act, the Department considers the volume of imports in determining whether revocation of the *Russia Order* would likely lead to continuation or recurrence of dumping. The Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the last continuation notice.

We examined import volumes from the ITC's Trade Dataweb for 2011 through 2015, which is the five year period that follows the five year period examined in the prior sunset review, and we compared this to the import volumes in pre-investigation period. The import volumes from Russia for the period of this sunset review were as follows: 166,809,000 kilograms (2011); 265,796,089 kilograms (2012); 32,995,418 kilograms (2013); 853,535,959 kilograms (2014); and 21,245,722 kilograms (2015). The average import volume, of 268,076,437 kilograms, for the sunset review period contrasts significantly with the high import volumes prior to the *Investigation Determination*, which were 1,814,501,117 kilograms (1997) and 3,483,382,960 kilograms (1998).<sup>26</sup> Additionally, import volumes of hot-rolled steel into the United States from Russia have declined significantly and remained below pre-order volumes, as evidenced by the import volume of only 21,245,722 kilograms of Russian hot-rolled steel in 2015.

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<sup>24</sup> See SAA at 879.

<sup>25</sup> See, *e.g.*, *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Argentina, Brazil, and Germany: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 59079 (October 6, 2006) and accompanying Issues and Decision Memorandum at 1.

<sup>26</sup> See Attachment 1.

The SAA and the House Report state that “{u}nder new section 752(c)(4), the existence of zero or *de minimis* dumping margins at any time while the order was in effect shall not in itself require Commerce to determine that there is no likelihood of continuation or recurrence of dumping. Exporters may have ceased dumping because of the existence of an order or suspension agreement. Therefore, the present absence of dumping is not necessarily indicative of how exporters would behave in the absence of the order or an agreement.”<sup>27</sup>

Because the import volume has declined from the pre-order levels since the publication of the *Russia Order* and no party has submitted any evidence to the contrary, pursuant to section 752(c)(1) of the Act, we find that dumping is likely to continue or recur if the *Russia Order* is revoked.

## 2. Magnitude of the Dumping Margin Likely to Prevail

### Interested Party Comments

To provide the ITC with the margin that is likely to prevail should the order be revoked, the SAA instructs the Department normally to select the rate from the original investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign government without the discipline of an order or suspension agreement in place.<sup>28</sup> Domestic interested parties state that consistent with the SAA, *Policy Bulletin, Final Modification for Reviews*, and prior reviews of the *Russia Order*, the Department should determine that the margins likely to prevail are the margins calculated for Russian producers of hot-rolled steel in the original investigation. Domestic interested parties add that there are currently no other rates on the record of this proceeding.

Domestic interested parties state that the *Final Modification for Reviews*, and the preceding WTO dispute settlement reports, do not apply in the margin determination in this sunset review. However, according to domestic interested parties, even if the *Final Modification for Reviews* applied, the Department should still report the dumping margins calculated in the investigation as the margins likely to prevail if the *Russia Order* were revoked because there is no indication that the Department applied zeroing in the *Investigation Determination*. Therefore, according to domestic interested parties, the Department should continue to report to the ITC the dumping margins established in the original investigation—73.59 percent for JSC Severstal and 184.56 percent for the Russia-wide rate (*i.e.*, the “all-others” rate)—as those that would likely prevail in the event of revocation because they represent the best evidence of the Russian producers’ and exporters’ behavior in the absence of an antidumping duty order.

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<sup>27</sup> See SAA at 890.

<sup>28</sup> See SAA at 889-90.

## Department's Position

Normally, the Department will provide to the ITC the company-specific, weighted-average dumping margin from the LTFV for each company.<sup>29</sup> The Department selects a rate from the LTFV because it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.<sup>30</sup> For companies not investigated individually, or for companies that did not begin shipping until after the order was issued, the Department will normally provide a rate based on the “all-others” rate from the investigation.<sup>31</sup>

The Department has determined that the weighted-average dumping margins established in the *Investigation Determination* represent the magnitude of the margin of dumping most likely to prevail if the *Russia Order* were revoked. We have further determined that the margins were not affected by the denial of offsets in accordance with the *Final Modification for Reviews*.<sup>32</sup> Specifically, the Department calculated the dumping margins on the basis of best available information and were determined without employing the “zeroing” methodology.

## Final Results of Review

We determine that revocation of the *Russia Order* would be likely to lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be weighted average margins up to the following:

<b>Exporter/Producer</b>	<b>Weighted-Average Margin (percent)</b>
JSC Severstal	73.59
All-Others Rate	184.56

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<sup>29</sup> See *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999); see also APG Substantive Response at 10.

<sup>30</sup> *Id.*; see also SAA at 890.

<sup>31</sup> See *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>32</sup> As stated in the *Final Modification for Reviews*, “[i]f the dumping margins determined in a manner not found to be WTO-inconsistent in these disputes indicate that dumping continued with the discipline of the order in place, those dumping margins alone can form the basis for a determination that dumping will continue or recur if the order were to be revoked.” See *Final Modification for Reviews*, 77 FR at 8103. The Department announced it would cease zeroing in investigations on December 26, 2006. See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006).

**Recommendation**

Based on our analysis of the substantive response received, we recommend adopting each of above positions. If these recommendations are accepted, we will publish the final results of the sunset review in the *Federal Register*, and notify the ITC of our findings.

AGREE ✓

DISAGREE \_\_\_\_\_

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

30 August 2016  
Date

ATTACHMENT I

Hot-Rolled Steel: Russia

U.S. Imports for Consumption

Annual Data

Year	Quantity (in kilograms)
1996	757,925,311
1997	1,814,501,117
1998	3,483,382,960
1999	30,479,788
2000	180,214,840
2001	20,580,919
2002	157,247,963
2003	51,366,487
2004	870,000,396
2005	306,929,121
2006	749,331,720
2007	147,241,815
2008	86,518,214
2009	5,380,336
2010	115,257,699
2011	166,809,232
2012	265,796,089
2013	32,995,418
2014	853,535,959
2015	21,245,722

Source: <https://dataweb.usitc.gov>, using HTS numbers specified at 17, footnote 33, of Domestic Interested Parties' Substantive Response, dated June 1, 2016.