

January 29, 2015

**TO:** Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** Lynn Fischer Fox  
Deputy Assistant Secretary  
for Policy and Negotiations  
Enforcement and Compliance

**RE:** Issues and Decision Memorandum for the Expedited Third Sunset Review of the Agreement Suspending the Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine

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## Summary

We have analyzed the substantive responses of the interested parties in the expedited sunset review of the Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine (“Suspension Agreement”).<sup>1</sup> 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. Likelihood of Continuation of Recurrence of Dumping
2. Magnitude of Margin Likely to Prevail

## Scope of the Suspension Agreement

The scope of the Suspension Agreement includes hot-rolled iron and non-alloy 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 1250 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 non-alloy 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

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<sup>1</sup> Suspension of Antidumping Investigation: Certain Cut-to-Length Carbon Steel Plate from Ukraine, 73 FR 57602 (October 3, 2008) (“Suspension Agreement”).

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 as subject merchandise in the Suspension Agreement 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”) for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (“HTS”) under item numbers 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. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of the Suspension Agreement is dispositive. Specifically excluded from subject merchandise within the scope of this Suspension Agreement is grade X-70 steel plate.

### **History of the Suspension Agreement**

On December 3, 1996, the Department of Commerce (“the Department”) initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930, as amended (the Act) on certain cut-to-length carbon steel plate (“CTL plate”) from Ukraine.<sup>2</sup> On December 20, 1996, the United States International Trade Commission (“ITC”) notified the Department of its affirmative preliminary injury determination.<sup>3</sup> On June 11, 1997, the Department preliminarily determined that CTL plate from Ukraine was being, or was likely to be, sold in the United States at less than fair value.<sup>4</sup>

The Department suspended the antidumping duty investigation on October 24, 1997, on the basis of an agreement by the Government of Ukraine to restrict the volume of direct and indirect exports of CTL plate to the United States in order to prevent the suppression or undercutting of price levels of United States domestic like products.<sup>5</sup> Thereafter, the Department completed its investigation and published in the Federal Register its final determination of sales at less than fair value. In the final determination, the Department calculated weighted-average dumping margins of 81.43 percent for JSC Azovstal Iron & Steel Works (“Azovstal”), 155.00 percent for JSC Ilyich Iron & Steel Works (“Ilyich”), and 237.91 percent for “all other” Ukrainian manufacturers, producers, and exporters of the subject merchandise.<sup>6</sup> On September 29, 2008, a revised agreement suspending the investigation was signed by representatives of Ukrainian CTL

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<sup>2</sup> See 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).

<sup>3</sup> See Cut-to-length Carbon Steel Plate from China, Russia, South Africa, and Ukraine, USITC Pub. 1720, Investigations Nos. 731-TA-753-756 (Preliminary) (December 1996).

<sup>4</sup> See Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine, 62 FR 31958 (June 11, 1997).

<sup>5</sup> See Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate from Ukraine, 62 FR 61766 (November 19, 1997) (“1997 Suspension Agreement”).

<sup>6</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine, 62 FR 61754, 61766 (November 19, 1997) (“Final Determination”).

plate producers. This Suspension Agreement became effective November 1, 2008, and replaced the previous non-market economy agreement, and amendments to it, that had been in effect since October 24, 1997.<sup>7</sup> The Suspension Agreement remains in effect for substantially all manufacturers, producers, and exporters of CTL plate from Ukraine.

In May 2003, the Department completed its first sunset review of the suspended investigation and found that “termination of the suspended antidumping duty investigation on CTL plate from Ukraine would likely lead to a continuation or recurrence of dumping.”<sup>8</sup> The Department found that the sharp drop in imports of CTL plate during the period of the Suspension Agreement was a result of the inability of Ukrainian producers to sell CTL plate at the reference prices and that “if the Agreement were terminated and the reference prices eliminated the Department considers that dumping would likely continue or recur.”<sup>9</sup> As a result, the suspended investigation was continued for an additional five-year period effective on September 17, 2003.<sup>10</sup>

Also in 2003, the Department completed an administrative review of the suspended investigation for the review period from November 1, 2000, through October 31, 2001, in which the domestic industry participated. The Department found that the Ukrainian producers that were reviewed and the Government of Ukraine had complied with the suspension agreement then in effect, (*i.e.*, the 1997 Agreement), but determined not to terminate the suspension agreement “because the continued maintenance of the Agreement is necessary to offset dumping.”<sup>11</sup> A similar administrative review of the period from November 1, 2004, through October 31, 2005, was conducted to determine whether the Government of Ukraine had complied with the suspension agreement. The Government of Ukraine was found to be in full compliance with the suspension agreement.<sup>12</sup>

In March 2009, the Department completed its second sunset review of the suspended investigation and found that “termination of the suspended antidumping duty investigation on CTL plate from Ukraine would likely lead to a continuation or recurrence of dumping.”<sup>13</sup> The Department found that the import data indicated that imports “declined significantly following the adoption of the Agreement, and have remained well below annual export limits for the period of review” and that “decreases in export volumes after the issuance of an Agreement is highly probative of the likelihood of continuation or recurrence of dumping.”<sup>14</sup> As a result, the

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<sup>7</sup> For more information, see Suspension Agreement.

<sup>8</sup> See 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) and accompanying Issues and Decision Memorandum, at “Likelihood of Continuation or Recurrence of Dumping”.

<sup>9</sup> *Id.*

<sup>10</sup> See Continuation of Suspended Antidumping Duty Investigations: Cut-to-Length Carbon Steel Plate from the People’s Republic of China, the Russian Federation, and Ukraine, 68 FR 54417 (September 17, 2003).

<sup>11</sup> See Certain Cut-to-Length Carbon Steel Plate from Ukraine; Final Results of Administrative Review of the Suspension Agreement and Determination Not to Terminate, 68 FR 35626 (June 16, 2003).

<sup>12</sup> See Certain Cut-to-Length Carbon Steel Plate from Ukraine; Final Results of Administrative Review of the Suspension Agreement, 71 FR 74486 (December 12, 2006).

<sup>13</sup> See Certain Cut-to-Length Carbon Steel Plate from Ukraine; Final Results of Full Sunset Review of the Suspension Agreement, 74 FR 11910, 11911 (March 20, 2009) (“Final Second Sunset Review”).

<sup>14</sup> See Certain Cut-to-Length Carbon Steel Plate From Ukraine; Preliminary Results of Full Sunset Review of the Suspension Agreement, 73 FR 71603 (November 25, 2008), and accompanying Preliminary Decision Memorandum

suspended investigation was continued for an additional five-year period effective on November 10, 2009.<sup>15</sup>

Finally, at the request of Nucor, the Department conducted a third administrative review covering the period from November 1, 2011 through October 31, 2012. In the final results of that review the Department found that Metinvest Holding LLC and its affiliated companies, Azovstal and Ilyich, were in compliance with the terms of the Suspension Agreement and that the Suspension Agreement was functioning as intended.<sup>16</sup>

There have been no related findings or rulings (e.g., changed circumstances reviews, scope rulings, or duty absorption reviews) issued with respect to the suspended investigation.

## Background

On October 1, 2014, the Department published the notice of initiation of the third five-year review (Sunset Review) of the suspended antidumping duty investigation on CTL Plate from Ukraine.<sup>17</sup> The Department received timely notices of intent to participate in this sunset review from SSAB Enterprises LLC (SSAB) on October 9, 2014, from ArcelorMittal USA LLC on October 15, 2014, and from Evraz Oregon Steel and Evraz Claymont Steel (collectively, “Evraz”), and Nucor Corporation, on October 16, 2014, in accordance with 19 CFR 351.218(d)(1)(i). All parties claimed domestic interested party status under section 771(9)(C) of the Act, stating they are producers in the United States of the domestic like product. We received no notices of intent to participate from respondent interested parties with respect to this proceeding.

In accordance with 19 CFR 351.218(d)(3)(i), complete substantive responses to the Department’s Notice of Initiation were required to be submitted not later than 30 days after publication in the Federal Register. Consistent with 19 CFR 351.218(e)(1)(i)(A), on October 31, 2014, ArcelorMittal, Nucor, and SSAB (collectively, “domestic interested parties”) jointly filed, and Evraz separately filed, timely, complete and adequate substantive responses.<sup>18</sup> The Department did not receive a substantive response from any Ukrainian producer/exporter of the subject merchandise. Pursuant to section 751(c)(3)(B) of 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

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at “Likelihood of Continuation or Recurrence of Dumping” (“Preliminary Second Sunset Review”), unchanged in Final Second Sunset Review.

<sup>15</sup> See Continuation of Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China and Continuation of the Suspended Antidumping Duty Investigations on Certain Cut-to-Length Carbon Steel Plate from the Russian Federation and Ukraine, 74 FR 57994 (November 10, 2009).

<sup>16</sup> See Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate from Ukraine; Final Results of Antidumping Duty Administrative Review, 78 FR 67334, 67335 (November 12, 2013) (“2011-2012 Final Results”).

<sup>17</sup> Initiation of Five-Year (Sunset) Review, 79 FR 59216 (October 1, 2014).

<sup>18</sup> See “Certain Cut-to-Length Carbon Steel Plate from Ukraine: Substantive Response to Notice of Initiation” from ArcelorMittal USA, Nucor Corporation, and SSAB Enterprises (“domestic interested parties’ response”) dated October 31, 2014, and “Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China, the Russian Federation, and Ukraine: Substantive Response from Domestic Producers” from Evraz Oregon Steel and Evraz Claymont Steel (“Evraz response”) dated October 31, 2014.

suspended antidumping duty investigation on CTL Plate from Ukraine.<sup>19</sup> The Department also notified the ITC that no respondent interested parties provided adequate responses, in accordance with 19 CFR 351.218(e)(1)(ii)(C)(1).

## 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 termination of the 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 this determination, 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 suspension agreement. When analyzing import volumes for subsequent sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.<sup>20</sup>

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action,<sup>21</sup> the House Report,<sup>22</sup> and the Senate Report,<sup>23</sup> the Department's determination of likelihood will be made on an order-wide (or suspension agreement-wide) basis, rather than on a company-specific basis.<sup>24</sup> In addition, the Department normally determines that revocation of an antidumping duty order or suspension agreement, as appropriate, is likely to lead to continuation or recurrence of dumping when, among other scenarios: (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 issuance of the order or suspension agreement; or (c) dumping was eliminated after the issuance of the order or suspension agreement and import volumes for the subject merchandise declined significantly.<sup>25</sup>

Alternatively, the Department normally will determine that revocation of an antidumping duty order or termination of a suspension agreement, as appropriate, would not be likely to lead to continuation or recurrence of dumping where dumping margins declined or were eliminated and

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<sup>19</sup> See Memorandum from Judith Wey Rudman to Sally Craig Gannon, "Sunset Review of the Agreement Suspending the Antidumping Investigation on Certain Cut-to-Length Carbon Steel Plate from Ukraine (3<sup>rd</sup> Review): Adequacy Determination," dated November 17, 2014.

<sup>20</sup> See Ferrovaniadium From the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders, 79 FR 14216 (March 13, 2014) and accompanying Issues and Decision Memorandum at "Legal Framework."

<sup>21</sup> See Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) ("SAA").

<sup>22</sup> See House Report, H. Rep. No. 103-826, pt. 1 (1994) ("House Report"), reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

<sup>23</sup> See Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

<sup>24</sup> See SAA at 879; House Report at 56.

<sup>25</sup> See SAA at 889-90; House Report at 63-64; Senate Report at 52; see also Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18872 (April 16, 1998) ("Sunset Policy Bulletin").

import volumes remained steady or increased after issuance of the order or suspension agreement.<sup>26</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 or pre-suspension agreement import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew comparison.<sup>27</sup>

Further, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order or suspension agreement is terminated. Section 752(c)(3) also instructs that the Department "shall normally choose a margin that was determined under section 735 or under subsection (a) or (b)(1) of section 751." Generally, the Department selects the antidumping duty margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order or a suspension agreement, as appropriate, in place, but that in some instances a more recently calculated rate may be more appropriate.<sup>28</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, *i.e.*, zeroing/the denial of offsets.<sup>29</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, pursuant to 19 CFR 351.218(e)(2).<sup>30</sup> To that end, 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 period 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>31</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 or termination of a suspension agreement would not be likely to lead to a continuation or recurrence of sales at less than fair value.<sup>32</sup>

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<sup>26</sup> See SAA at 889-90; House Report at 63; Senate Report at 52.

<sup>27</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.

<sup>28</sup> See SAA at 890; see also 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>29</sup> See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101, 8103 (February 14, 2012) ("Final Modification for Reviews").

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> See SAA at 890.

Below we address the comments of the domestic interested parties.

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

### **Interested Party Comments**

The domestic interested parties and Evraz contend that termination of the suspended antidumping duty investigation on CTL plate from Ukraine would lead to the continuation or recurrence of dumping at margins equivalent to or greater than those found in the original investigation. According to the domestic interested parties and Evraz, the record demonstrates that, since the issuance of the Agreement, dumping has continued and shipments of the subject merchandise have decreased significantly.

The domestic interested parties note that, while the Department has conducted three administrative reviews of the Suspension Agreement, no new margins were calculated. Accordingly, the domestic interested parties assert that the margins determined in the original investigation continue to exist for all shipments of CTL plate from Ukraine. The domestic interested parties maintain that, consistent with the SAA and the Sunset Policy Bulletin, the Department should report the original margins from the antidumping investigation to the ITC. The domestic interested parties assert that the Ukraine-wide rate was based on total adverse facts available, which represented the average margin from the petition, and there is no evidence that Azovstal's and Ilyich's margins were calculated using zeroing. They maintain that, as such, the Final Modification for Reviews has no effect on this conclusion. The domestic interested parties further assert that the continued existence of margins above de minimis is, in itself, a sufficient basis for the Department to conclude that Ukrainian producers are likely to continue to engage in dumping, absent the existence of the Suspension Agreement or an order.

With respect to import volumes, the domestic interested parties and Evraz cite to import statistics to support their argument that import volumes of CTL plate to the United States have declined significantly since the period prior to the initiation of the investigation and adoption of the 1997 Suspension Agreement. According to the domestic interested parties, the imposition of the Suspension Agreement directly impacted the level of imports from Ukraine, with a dramatic decline in imports and, in the last year, the near total cessation of imports of CTL plate from Ukraine. Evraz adds that because CTL plate imports from Ukraine declined after the 1997 Suspension Agreement became effective, this suggests that producers have been unable or unwilling to participate significantly in the U.S. market at prices that are above or close to fair value.

No respondent party participated or provided comments in this sunset review.

### **Department's Position:**

As explained in the Legal Framework section above, when determining whether termination of a suspended investigation would be likely to lead to a continuation or recurrence of dumping, sections 752(c)(1)(A)-(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 suspension agreement. “Declining import volumes accompanied by the continued existence of dumping margins after the issuance of {a suspension agreement} may provide a strong indication that, absent {a suspended investigation}, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-{suspended investigation} volumes.”<sup>33</sup> For the reasons below, we find that termination of the Suspension Agreement would likely result in the continuation of dumping in the United States due to the continued existence of dumping margins and a significant decline in import volume since the issuance of the Suspension Agreement.

We considered whether termination of the Suspension Agreement is likely to lead to continuation or recurrence of dumping where “dumping continued at any level above de minimis” after issuance of the Suspension Agreement.<sup>34</sup> With respect to dumping margins, the Department calculated an “all others” rate above de minimis for certain Ukraine producers and exporters during the investigation.<sup>35</sup> No more recently calculated margins exist. Moreover, the dumping margin for “all others” in the antidumping investigation was based on the dumping margins in the petition<sup>36</sup> and, therefore, does not include zeroing and is consistent with the Final Modification for Reviews.<sup>37</sup> As such, we find the weighted-average dumping margins determined in the suspended investigation – specifically the “all others” rate of 237.91 percent – demonstrative of the behavior of Ukrainian manufacturers, producers, and exporters without the discipline of a suspension agreement in place.

Regarding import levels, import data released by the ITC indicates that imports declined significantly following adoption of the Suspension Agreement.<sup>38</sup> The Department found that, in the five years following the second sunset review, imports remained significantly lower than in 1996, the year prior to filing of the petition. Indeed, imports in each year from 2009 through 2013 ranged from less than one percent to just over four percent of pre-petition import volumes.<sup>39</sup>

Based on this information, the Department finds that the continued decrease in import volumes after issuance of the Suspension Agreement is highly probative of the likelihood of continuation or recurrence of dumping. Declining import volumes after the issuance of the Suspension Agreement provide a strong indication that, absent the agreement, dumping would be likely to continue or recur if the Suspension Agreement were terminated.<sup>40</sup>

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<sup>33</sup> See SAA at 889.

<sup>34</sup> See Sunset Policy, 63 FR at 18872.

<sup>35</sup> See Final Determination, 62 FR at 61766.

<sup>36</sup> See id. at 61760.

<sup>37</sup> See Final Modification for Reviews, 77 FR at 8103.

<sup>38</sup> See Appendix 1 (USITC DataWeb import statistics at <http://dataweb.usitc.gov>).

<sup>39</sup> See id.

<sup>40</sup> See section 752(c)(1) of the Act; SAA at 889-90; House Report at 63-64; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation; Final Results of the Expedited Sunset Review of the Antidumping Duty Suspended Investigation, 75 FR 47263 (August 5, 2010), and accompanying Issues and Decision Memorandum at “Likely Effects of Termination of the Suspension Agreement and Underlying Investigation.”

Therefore, given the level of dumping found for “all others” in the original investigation and the significant decline in import volumes during the five year period during this third sunset review relative to import levels prior to acceptance of the Suspension Agreement, we find that dumping is likely to continue or recur if the Suspension Agreement were terminated.

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

### **Interested Party Comments:**

The domestic interested parties and Evraz assert that, consistent with the SAA and the Department’s Sunset Policy Bulletin, the Department should provide to the ITC the margins from the original investigation. The domestic interested parties assert that the Final Modification for Reviews has no effect on its proposal to report the margins from the original investigation as those likely to prevail.

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

### **Department’s Position:**

As discussed in the Legal Framework section above, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order is revoked, or a suspension agreement is terminated. Normally, the Department will provide to the ITC the company-specific, weighted-average antidumping duty margin from the investigation for each company.<sup>41</sup> The Department’s preference for selecting a rate from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.<sup>42</sup>

The Department has determined that the “all others” antidumping duty margin established in the final determination of the investigation is representative of the magnitude of the margins of dumping most likely to prevail if the Suspension Agreement were revoked. This dumping margin is a rate from the investigation, and no new margins have been calculated in subsequent administrative reviews. We further determine that the Department can continue to rely on this dumping margin, because, as noted above, the rate being reported to the ITC, the “all others” rate from the investigation, is consistent with the Final Modification for Reviews because it was based on total adverse facts available derived from the rates alleged in the petition and did not involve zeroing/the denial of offsets.<sup>43</sup> Accordingly, we find it appropriate to provide the ITC with the “all others” rate from the final determination in the investigation because this rate best reflects the behavior of exporters without the discipline of the Suspension Agreement in place.

### **Final Results of Expedited Review**

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<sup>41</sup> See SAA at 890; Eveready Battery Co., Inc. v. United States, 77 F. Supp. 2d 1327, 1333 n.9 (CIT 1999).

<sup>42</sup> See SAA at 890; Eveready Battery, 77 F. Supp. 2d at 1333 n.9.

<sup>43</sup> See Final Modification for Reviews, 77 FR at 8103; Final Determination, 62 FR at 61760 (explaining that “all other” rate is based on “adverse total facts available,” namely, “the average petition rate of 237.91 percent”).

We determine that termination of the Suspension Agreement on CTL plate from Ukraine 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 237.91 percent.

**Recommendation**

Based on our analysis of the substantive responses received and the record evidence, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register, and notify the ITC of our determination.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

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Ronald K. Lorentzen  
Acting Assistant Secretary for  
Enforcement and Compliance

\_\_\_\_\_  
Date

# Appendix 1

## Imports of CTL from Ukraine: First Unit of Quantity

### U.S. Imports for Consumption

#### Annual Data

1996	1997		2009	2010	2011	2012	2013
<i>In Actual Units of Quantity</i>							
First Unit of Quantity where quantities are collected in kilograms							
568,588,763	167,482,022		14,640,124	3,942,936	23,390,620	13,358,168	0

Source: USITC Interactive Tariff and Trade DataWeb at <http://dataweb.usitc.gov>

Per USITC DataWeb report "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."

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