

MEMORANDUM TO: David M. Spooner
Assistant Secretary for
Import Administration

FROM: Ronald K. Lorentzen
Deputy Assistant Secretary for
Policy and Negotiations

SUBJECT: Issues and Decision Memorandum on the Suspended Antidumping
Duty Investigation of Certain Cut-to-Length Carbon Steel Plate
from Ukraine

Summary:

We have analyzed the substantive responses of the domestic interested parties and respondent interested parties in the full sunset review of the suspended antidumping duty investigation on certain cut-to-length carbon steel plate from Ukraine. We recommend that you approve the Departmental positions listed in the “Discussion of the Issues” section of this memorandum for these preliminary results of review. Below is the complete list of issues in this full sunset review for which we received substantive responses from the domestic and respondent interested parties:

1. Likelihood of continuation or recurrence of dumping
 - a. Weighted-average dumping margin
 - b. Volume of imports
 - c. Other factors
2. Magnitude of the margin likely to prevail
 - a. Margin from the investigation

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.¹ On December 20,

¹ 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).

1996, the United States International Trade Commission (“Commission”) notified the Department of its affirmative preliminary injury determination.² 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.³

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.⁴ Thereafter, the Department completed its investigation and published in the Federal Register its final determination of sales at less than fair market 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.⁵ A Suspension Agreement (“Agreement”) remains in effect for all manufacturers, producers, and exporters of CTL plate from Ukraine.⁶

In 2003, the Department completed its first sunset review of the Agreement and found that “termination of the suspended antidumping duty investigation on CTL plate from Ukraine would lead to a continuation or recurrence of dumping”.⁷ The Department found that the sharp drop in imports of CTL plate during the period of the 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

² 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).

³ 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).

⁴ See Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate from Ukraine, 62 FR 61766 (November 19, 1997).

⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine, 62 FR 61754 (November 19, 1997).

⁶ On September 29, 2008, a revised Suspension Agreement was signed by representatives of Ukrainian CTL plate producers. This agreement became effective November 1, 2008, and replaces the previous non-market economy agreement, and amendments to it, that have been in effect since 1997. For more information, see http://www.trade.gov/press/press_releases/2008/ukraine_092908.asp.

⁷ 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”.

likely continue or recur”.⁸ As a result, the order was continued for an additional five-year period on September 17, 2003.⁹

Also in 2003, the Department completed an administrative review of the Agreement 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 Agreement, but determined not to terminate the Agreement “because the continued maintenance of the Agreement is necessary to offset dumping”.¹⁰ A similar administrative review of the 2004-05 period was conducted to determine whether Ukrainian CTL Plate producers and the Government of Ukraine had complied with the Agreement. Ukrainian producers were found to be in full compliance with the Agreement.¹¹ There have been no further administrative reviews.

Background:

On August 1, 2008, the Department initiated a second sunset review of the suspended antidumping duty investigation on CTL plate from Ukraine, pursuant to section 751(c) of the Act.¹² The Department received notices of intent to participate on behalf of ArcelorMittal USA, SSAB North America Division, Evraz S.A. Oregon Steel Mills and Evraz S.A. Claymont, and Nucor Corporation (collectively, “domestic interested parties”), within the applicable deadline (September 2, 2008) specified in section 351.218(d)(1)(i) of the Department’s regulations.¹³ Domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers of the domestic like products.

The Department received complete substantive responses from the domestic interested parties within the 30-day deadline specified in the Department’s regulations under section 351.218(d)(3)(i).¹⁴ On September 2, 2008, the Department received a complete substantive response from Azovstal Iron & Steel Works and Ilyich Iron & Steel Works (collectively, “respondent interested parties”).¹⁵ Respondent interested parties assert that they participated

⁸ Id.

⁹ 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).

¹⁰ 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).

¹¹ 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).

¹² See Notice of Initiation of Five-Year (“Sunset”) Review, 73 FR 44968 (August 1, 2008).

¹³ See Notices of Intent to Participate for ArcelorMittal USA, Inc. (August 18, 2008) and SSAB North America Division; Evraz S.A. Oregon Steel Mills; and Evraz S.A. Claymont (August 15, 2008).

¹⁴ See Collective Substantive Response for ArcelorMittal USA, SSAB North America Division, Evraz S.A. Oregon Steel Mills and Evraz S.A. Claymont, and Nucor Corporation (August 29, 2008).

¹⁵ See Substantive Response for Azovstal and Ilyich (September 2, 2008).

fully in the original investigation and have exported CTL plate from Ukraine in accordance with the terms and conditions of the Agreement. Domestic interested parties did not submit rebuttal responses.

Discussion of the Issues:

In accordance with section 751(c)(1) of the Act, the Department is conducting a full sunset review to determine whether revocation of the suspended antidumping duty investigation would likely lead to a continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall 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 the period after the suspension of the antidumping duty investigation. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the Commission the magnitude of the margin of dumping likely to prevail if the suspension agreement were terminated. Below we address the comments of interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Parties' Substantive Comments:

The domestic interested parties assert that termination of the suspended antidumping duty investigation on CTL plate from Ukraine would likely lead to a continuation or recurrence of dumping in the United States by Ukrainian manufacturers, producers, and exporters. With respect to import volumes, the domestic interested parties note that import volumes of CTL plate to the United States have declined significantly since the investigation and adoption of the Agreement in 1997, and have remained below the levels before the investigation and below the levels permitted under the Agreement as a result of the reference prices at which the Ukrainian producers must sell.

Domestic interested parties provided import data released by the Commission that demonstrates a substantial downward trend in imports of CTL plate. Specifically, in the three-year period prior to the Agreement (1994-1996), imports of CTL plate averaged 501,279 short tons annually, and rose from 295,775 short tons in 1994 to 627,796 short tons in 1996. After the Agreement was implemented, imports of CTL plate dropped significantly to levels below those permitted by the export limits, and from 2003 through 2007 imports have averaged 88,906 tons per year. For the period of January-June 2008, imports of CTL plate from Ukraine were over 60,000 tons, but as with the first sunset review period, imports have remained below the levels before the investigation and below the levels permitted under the Agreement. Thus, domestic interested parties assert that since the Agreement took effect, imports of CTL plate from Ukraine have declined substantially and have remained well under the annual export limits throughout the period of review. Accordingly, this overall reduction of imports of CTL plate from Ukraine following imposition of the Agreement presents a reasonable indication that dumping would continue or recur were the Agreement terminated.

Respondent Interested Parties' Substantive Comments:

Respondent interested parties assert that termination of the suspended antidumping duty investigation on CTL plate from Ukraine would not lead to the continuation or recurrence of dumping in the U.S. market. Respondent interested parties state that at the time of the original antidumping duty investigation, Ukrainian imports were priced below U.S. market prices because their manufacturers, producers, and exporters were unfamiliar with the U.S. market. Since that time, respondent interested parties argue that Ukrainian manufacturers, producers, and exporters of CTL plate have fully privatized and now operate in accordance with market principles in both domestic and export markets. Respondent interested parties further cite the current process of converting the non-market economy suspension agreement to a market economy agreement, an improved balance between supply and demand in the U.S. CTL plate market and resulting price increases, and the low cost production of CTL plate in Ukraine as reasonable indications that respondents would not continue dumping CTL plate in the U.S. market should the suspension agreement be terminated.

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.¹⁶ The Department also recognizes that in the context of a full 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

¹⁶ 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 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.

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 ranging from 81.43 percent to 155.00 percent for two Ukrainian manufacturers, producers, and exporters, and a Ukraine-wide rate of 237.91 percent. No more recently calculated margins exist. As such, we find the weighted-average dumping margins determined in the suspended investigation 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 Commission indicate that imports declined significantly following adoption of the Agreement, and have remained well below annual export limits for the period of review.¹⁷ Additionally, data submitted by respondent interested parties corresponds with this trend.¹⁸

Based on this information, the Department finds that decreases in export volumes after the issuance of the 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.

As stated above, the Department may also consider relevant other factors in a sunset review, according to section 752(c)(2) of the Act and 19 CFR 351.218(d)(3)(iv), provided the interested party submits evidence of good cause in its substantive response. Other factors cited by respondent interested parties include (a) market orientation, (b) an improved balance between supply and demand in the U.S. CTL plate market, and (c) low cost production of CTL plate in Ukraine. Regarding market orientation, the Department finds insufficient cause to consider this argument. Respondent interested parties simply assert that prior to the antidumping investigation, Ukrainian producers were unfamiliar with the U.S. market. They further state that since then, both Azovstal and Ilyich have fully privatized and operate in accordance with market principles both at home and abroad. Yet, respondent interested parties never articulate a rationale nor provide any analysis of how such a factor is relevant, much less show good cause to consider it. Finally, with regard to supply and demand, and the assertion of low production costs, respondent interested parties provide no analysis and little supporting information for either factor. Respondent interested parties point to rising prices, and Ukraine's low labor, energy, and materials costs, but fail to show how these factors are relevant to the overall analysis of whether imports have measurably decreased following implementation of the Agreement.

¹⁷ See Appendix 1 (USITC Dataweb import statistics).

¹⁸ Respondents did not indicate the source of their import data, nor provide the raw data that comprises the chart in their submission. While the data, as presented, does appear to coincide with Commission data, we are not able to fully confirm or corroborate the data.

Accordingly without such analysis, the Department cannot find good cause to consider these arguments.

Therefore, given the level of dumping found in the original investigation and that import volumes have declined significantly following the issuance of the Suspension Agreement, we find that dumping is likely to continue or recur if the Agreement were terminated.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments:

In their substantive response, the domestic interested parties recommend that, consistent with the Department's *Sunset Policy Bulletin*, the Department should provide to the Commission the company-specific margins from the original investigation. Respondent interested parties argue that, because there is no likelihood of continuation or recurrence of dumping if the suspended investigation were terminated, the prevailing margin should be zero.

Department's Position:

Normally the Department will provide to the Commission the company-specific margin from the original investigation for each company.¹⁹ For companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all-others" (or "Ukraine-wide") rate from the investigation.

In the original investigation, the Department calculated dumping margins for Ukrainian manufacturers, producers, and exporters of CTL plate, including a "Ukraine-wide" rate of 237.91 percent. The calculated margins from the original investigation are the only calculated rates that reflect the behavior of Ukrainian producers and exporters without the discipline of the suspension agreement in place. Therefore, pursuant to section 752(c) of the Act, the Department will report to the Commission the company-specific rates and "Ukraine-wide" rate from the investigation as contained in the Preliminary Results of Review section of this decision memorandum.

Preliminary Results of Review:

We determine that termination of the suspended antidumping duty investigation on certain cut-to-length carbon plate steel from Ukraine would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

¹⁹ See 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
Azovstal	81.43
Ilyich	155.00
Ukraine-wide	237.91

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 preliminary results of review in the Federal Register.

 David M. Spooner
 Assistant Secretary for
 Import Administration

 Date

Appendix 1

Ukraine CTL Plate: First Unit of Quantity

U.S. Imports for Consumption

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

	1996		2003	2004	2005	2006	2007	2008 YTD
Quantity Description								
kilograms	569,533,040		4,285,230	117,172,086	80,990,092	111,059,052	52,345,528	85,518,734

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.