

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
Import Administration

FROM: Jeffrey A. May
Director, Office of Policy
Import Administration

SUBJECT: Issues and Decision Memorandum for the Suspended Antidumping
Duty Investigation on 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 positions we have developed 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

Margin from 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 (“the Act”) on certain cut-to-length carbon steel plate (“CTL plate”) from Ukraine.¹ On December 19, 1996, the United States (“U.S.”) International Trade 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 U.S. 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

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)

² See ITC Investigation Nos. 731-TA-753-756.

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 (October 24, 1997).

JSC Azovstal Iron & Steel Works (“Azovstal”), 155.00 percent for JSC Ilyich Iron & Steel Works (“Ilyich”), and 237.91 for “all other” Ukrainian manufacturers, producers, and exporters of the subject merchandise.⁵ The Suspension Agreement (“Agreement”) remains in effect for all manufacturers, producers, and exporters of CTL plate from Ukraine.

On December 19, 2001, the Department initiated an administrative review of the Agreement, and issued a Preliminary Results of Administrative Review on December 9, 2002.⁶ There have been no other administrative reviews of the Agreement.

Background:

On September 3, 2002, the Department published in the Federal Register a notice of initiation of the five-year sunset review of the suspended antidumping duty investigation on CTL plate from Ukraine in accordance with section 751(c) of the Act.⁷

The Department received Notices of Intent to Participate on behalf of interested parties Bethlehem Steel Corporation, United States Steel Corporation, IPSCO Steel Inc., and Nucor Corporation (collectively, “domestic interested parties”), within the applicable deadline (September 18,

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 See Certain Cut-to-Length Carbon Steel Plate from Ukraine; Preliminary Results of Administrative Review of the Suspension Agreement, 67 FR 72916 (December 9, 2002). The Preliminary Results of Administrative Review has preliminarily determined that the Government of Ukraine complied with the Suspension Agreement, though outstanding compliance issues remain to be addressed in a subsequent verification in Ukraine. In this administrative review, the Department did not undertake to determine whether dumping margins continued to exist post-Agreement.

⁷ See Notice of Initiation of Five-Year (“Sunset”) Reviews, 61 FR 64051 (September 3, 2002).

2002) specified in section 351.218(d)(1)(i) of the Sunset Regulations.⁸ The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as domestic manufacturers, producers, and exporters of domestic like products.⁹

The Department received complete substantive responses to the notice of initiation from the domestic interested parties within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i).¹⁰ On October 3, 2002, the Department received a complete substantive response from respondent interested parties Azovstal and Ilyich (collectively, “respondents”).¹¹ Lastly, domestic interested parties filed rebuttal responses to respondents’ substantive response on October 8, 2002.¹²

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

⁸ See Notices of Intent to Participate for IPSCO Steel Inc. and Nucor Corporation (September 16, 2002) and Bethlehem Steel Corporation and United States Steel Corporation (September 18, 2002).

⁹ Bethlehem Steel Corporation and the United States Steel Corporation have been active participants in the Ukrainian antidumping proceedings since the original petition was filed. See also Substantive Response for Bethlehem Steel Corporation and United States Steel Corporation, p. 3. IPSCO Steel Inc. participated in the original investigation through questionnaire responses to the International Trade Commission. See also Substantive Responses for IPSCO Steel Inc. and Nucor Corporation, p. 2-3. Nucor Corporation did not participate in the initial investigation. *Id.* at 3.

¹⁰ See Substantive Responses for IPSCO Steel Inc. and Nucor Corporation (October 2, 2002) and Bethlehem Steel Corporation and United States Steel Corporation.

¹¹ See Substantive Response for Respondent Interested Parties (October 3, 2002).

¹² See Rebuttal Responses from Domestic Interested Parties (October 8, 2002).

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 International Trade Commission (“the Commission”) the magnitude of the margin of dumping likely to prevail if the order were revoked.

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 U.S. by Ukrainian manufacturers, producers, and exporters. With respect to import volumes, the domestic interested parties note that import volumes of CTL plate to the U.S. have (1) declined significantly since the investigation and adoption of the Agreement in 1997, and (2) never returned to pre-agreement levels or reached the quota price level set by the Agreement.

Specifically, imports of CTL plate from Ukraine amounted to 569,533,040 kg in 1996.¹³ In 1997, the year the Agreement was adopted, imports fell to 167,482,022 kg, and then to 134,581,537 kg in 1998 and 3,459,600 kg in 1999.¹⁴ Import volumes thereafter rose to 25,970,220 kg in 2000 and to 28,409,238 kg in 2001.¹⁵ The domestic interested parties cite this overall reduction of imports of

¹³ Bureau of the Census trade statistics.

¹⁴ Id.

¹⁵ Id.

CTL plate from Ukraine following imposition of the Agreement as a reasonable indication that dumping would continue or recur were the Agreement terminated.

Domestic interested parties Bethlehem Steel Corporation and United States Steel Corporation (“Bethlehem and U.S. Steel”) specifically cite unfulfilled quota limits for Ukrainian CTL plate imports under the Agreement as evidence that Ukrainian manufacturers, producers, and exporters must sell CTL plate for less than the Agreement’s set prices in order to sell at pre-agreement volumes.¹⁶ Similarly, domestic interested parties IPSCO Steel Inc. and Nucor Corporation (“IPSCO and Nucor”) stated in their substantive response that CTL plate imports comprised 37.04 percent of total Ukrainian imports in 1995 but only 0.09 percent during the first half of 2002, evidencing respondents’ need to sell at less than fair value in order to sell at pre-agreement volumes.¹⁷ Lastly, Bethlehem and U.S. Steel cite other factors such as Ukraine’s weakening currency exchange rate, underutilized crude steel production capacity and capacity utilization, and declining domestic demand for steel due to worldwide overproduction as added incentives for Ukrainian steel producers to continue selling CTL plate to the U.S. for less than fair value in the absence of an Agreement (or order).¹⁸

For the reasons stated above, the domestic interested parties believe that termination of the suspended antidumping duty investigation would result in the continuation or recurrence of dumping.

Respondent Interested Parties’ Substantive Comments:

¹⁶ See Substantive Response for Bethlehem Steel Corporation and United States Steel Corporation, p. 7-9.

¹⁷ See Substantive Responses for IPSCO Steel Inc. and Nucor Corporation, p. 3-4.

¹⁸ See Substantive Response for Bethlehem Steel Corporation and United States Steel Corporation, p. 9-11.

In their substantive response of October 3, 2002, respondents 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. Respondents 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.¹⁹ Since that time, respondents 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.²⁰ Respondents further cite (a) an increased market orientation in Ukraine, (b) an improved balance between supply and demand in the U.S. CTL plate market and resulting price increases, and (c) 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 suspended antidumping duty investigation be terminated.²¹

For the reasons stated above, the respondent interested parties believe that termination of the suspended antidumping duty investigation would not result in the continuation or recurrence of dumping.

Domestic Interested Party Rebuttals:

The domestic interested parties, in their rebuttals to respondents' substantive response, argue that there is no evidence to support respondents' assertion that sales of CTL plate to the U.S. would

¹⁹ See Substantive Response for Respondents, p. 4.

²⁰ Id.

²¹ Id.

not continue at less than fair market value in the absence of the Agreement. Bethlehem and U.S. Steel specifically disputed respondents' contention that they have fully privatized and now operate in accordance with market principles in their home and export markets.²² In support, Bethlehem and U.S. Steel note that the Department still classifies Ukraine as a non-market economy. Bethlehem and U.S. Steel further cite U.S. governmental reports which have stated that the Government of Ukraine has continued to control a majority of the means of production and price decisions on products manufactured and produced in Ukraine.²³

Regarding respondents' claim that they are low-cost producers of CTL plate, Bethlehem and U.S. Steel contend that such an assertion is incorrect and irrelevant in a sunset review, and that several U.S. governmental reports have stated otherwise.²⁴ Bethlehem and U.S. Steel cited a recent Report to the President: Global Steel Trade, Structural Problems and Future Solutions issued by the Department which stated, "[Ukrainian] steel companies have not been able to reap maximum cost benefit from the country's relatively strong raw material sector[, and the] typical Ukrainian steel mill is burdened by a high cost of production."²⁵ Lastly, Bethlehem and U.S. Steel cite respondents' own data on CTL plate export volumes, summarized in the *Department's Position* below, which show Ukrainian CTL plate import volumes in dramatic decline following conclusion of the Agreement.²⁶

²² See Rebuttal Responses for Bethlehem and U.S. Steel, p. 2.

²³ Id. at 2-3.

²⁴ Id. at 3-5.

²⁵ Id. at 4, citing Report to the President Global Steel Trade, Structural Problems and Future Solutions, U.S. Department of Commerce International Trade Administration at 158 (July 2000).

²⁶ Id. at 6.

Similarly, domestic interested parties IPSCO Steel Inc. and Nucor Corporation (“IPSCO and Nucor”) counter respondents’ assertions of steel industry privatization and cessation of sales of CTL plate at less than fair market value by arguing that even were such assertions true it would not justify termination of the suspended antidumping duty investigation since Ukraine CTL plate imports to the U.S. have declined in such a significant manner following imposition of the Agreement.²⁷ Furthermore, IPSCO and Nucor dispute respondents’ claim that demand in the U.S. market for CTL plate has significantly improved over the period of review, stating that such an assertion is untrue and unsubstantiated.²⁸

Overall, domestic interested parties argue the facts summarized above demonstrate that sales at less than fair value would continue or recur without the discipline of an Agreement (or order) in place.

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.

²⁷ See Rebuttal Responses for IPSCO Steel Inc. and Nucor Corporation, p. 2.

²⁸ Id.

Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that a determination of likelihood will be made on an order-wide basis.²⁹ 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.³⁰ 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 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. Nor will any newly calculated dumping margins be determined in the

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

³⁰ Id.

currently ongoing administrative review of the Agreement.³¹ 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 statistics data provided by the domestic interested parties and confirmed by the Department indicate that imports declined significantly following adoption of the Agreement, including imports for the two Ukrainian manufacturers, producers, and exporters participating in this review. Moreover, according to data in the respondents' own substantive response, volumes of CTL plate exports dropped significantly in the years following imposition of the Agreement.³² One respondent, Azovstal, reported an export volume of 224,321,420 kg in 1995.³³ Thereafter, Azovstal reported declining volumes of 28,860,320 kg in 1997, 63,634,950 kg in 1998, 12,206,340 kg in 2000, and 7,241,220 kg in 2001.³⁴ Another respondent, Ilyich, reported an export volume of 93,334,000 kg in 1995.³⁵ Thereafter, Ilyich reported significantly lower volumes of 62,270,000 kg in 1998, 11,582,000 kg in 2000, and 22,073,000 kg in 2001.³⁶

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

³¹ See supra footnote 6.

³² See Substantive Response for Respondent Interested Parties, Attachments A and B.

³³ Id. at Attachment A.

³⁴ Id.

³⁵ Id. at Attachment B.

³⁶ Id.

dumping. Declining import volumes, as discussed in section 752(c)(1) of the Act, section II.A.3 of the *Sunset Policy Bulletin*, 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 19 CFR 351.218(d)(3)(iv), provided the interested party submits evidence of good cause in its substantive response. With regard to other factors cited by the respondents, the Department does not find Azovstal and Ilyich provided good cause to consider their assertions of (a) increased market orientation, (b) an improved balance between supply and demand in the U.S. CTL plate market, or (c) low cost production of CTL plate. Regarding market orientation, respondents merely state that “Azovstal and Ilyich...have fully privatized and fully operate in accordance with market principles” without offering support for their assertion.³⁷ Therefore, since respondents have not supplied the Department with any rationale why the Department should consider Ukraine’s alleged market orientation (and considering the Department still considers the Ukraine a non-market economy³⁸) in its likelihood analysis, the Department finds insufficient cause to consider this argument. Additionally, regarding (1) an alleged improved balance between supply and demand in the U.S. CTL plate market and (2) Ukraine as a low cost steel producer, the respondents have failed to show how these factors

³⁷ See Substantive Response for Respondent Interested Parties, p. 4.

³⁸ 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); See also Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod From Ukraine, 67 FR 51536 (August 8, 2002) (deferring a decision regarding Ukraine’s non-market economy status).

are relevant to the Department's analysis, which is focused on decreasing imports following imposition of the Agreement. Consequently, the Department finds no good cause exists to consider other factors cited by respondents.

Therefore, given 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 revoked.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments:

In their substantive response, the domestic interested parties recommend that, consistent with the *Sunset Policy Bulletin*, the Department should provide to the Commission the company-specific margins from the original investigation.

Department's Position:

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination of the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all-others" (or "Ukraine-wide") rate from the investigation.³⁹

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

³⁹ See section II.B.1 of the *Sunset Policy Bulletin*.

percent. No interested party has argued that the Department should report to the Commission rates other than those calculated for purposes of the original investigation. Consequently, consistent with section II.B.1 of the *Sunset Policy Bulletin*, the Department will report to the Commission the company-specific rates and “Ukraine-wide” rate from the investigation as contained in the Final Results of Review section of this decision memorandum.

Final Results of Review:

We determine that revocation 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:

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 final results of review in the *Federal Register*.

Faryar Shirzad
Assistant Secretary
for Import Administration

(Date)