

MEMORANDUM TO: Joseph A. Spetrini
Acting 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 case brief submitted by the Embassy of Ukraine and the rebuttal brief submitted by Bethlehem Steel Corporation and United States Steel Corporation 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 the final results of review. Below is the complete list of issues in this full sunset review for which we received comments by the parties:

1. Likelihood of continuation or recurrence of dumping
Volume of Imports
2. Magnitude of the margin likely to prevail
Margin from investigation

Background:

In our preliminary results, published on December 31, 2002, we determined that the revocation of the suspended antidumping duty investigation on certain cut-to-length carbon plate steel (“CTL plate”) from Ukraine would be likely to lead to continuation or recurrence of dumping, at margins calculated in the final determination of the original investigation.¹ On February 10, 2003, the Department received a case brief from the Embassy of Ukraine (“the Embassy”) within the applicable deadline.² On February 14, 2003, the Department received a rebuttal brief from domestic interested parties Bethlehem Steel Corporation and United States Steel Corporation, also within the applicable deadline.³ No party requested a public hearing.

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 termination 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

¹ See Preliminary Results of Five-Year Sunset Review of Suspended Antidumping Duty Investigation on Certain Cut-to-Lenght Carbon Steel Plate from Ukraine, 67 FR 79901 (December 31, 2002).

² See Case Brief from the Embassy of Ukraine, Trade and Economic Mission (February 10, 2003).

³ See Rebuttal Brief from Bethlehem Steel Corporation and United States Steel Corporation (February 14, 2003).

the International Trade Commission (“ITC”) the magnitude of the margin of dumping likely to prevail if the suspended investigation were terminated. Below we address the comments of interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

The Embassy’s Case Brief:

In its case brief, the Embassy argues that the substantial decrease in imports of CTL plate into the U.S. market after the issuance of the suspension agreement (“the Agreement”) was caused, in part, by “deficiencies in the mechanism of reference prices.”⁴ Specifically, the Embassy argues that the failure to negotiate reference prices for plate grade API-2Y “was one of the factors that had a direct negative impact on [the] volumes of import[s] of Ukrainian CTL plate over 1997 - 2002.”⁵ The Embassy also states that deficiencies in the methodology of the reference price calculation caused Ukrainian CTL plate to become “uncompetitive on the U.S. market during the first half of 1998 and the second half of 2000.”⁶ Moreover, the Embassy argues that Ukrainian producers of CTL plate have undergone a “difficult, long-term and gradual process” to acclimate to the U.S. market following their “forced and artificial exclusion.”⁷ Lastly, the Embassy states that the confluence of concurrent antidumping and safeguard measures contributed to the decrease in imports of CTL plate to the United States.⁸

⁴ See Case Brief from the Embassy of Ukraine, p. 4.

⁵ Id. at 5.

⁶ Id.

⁷ Id. at 8.

⁸ Id. at 9.

Domestic Interested Parties' Rebuttal Brief:

In its rebuttal brief, the domestic interested parties highlight the Department's mandated criteria for determining whether termination of a suspended antidumping investigation would likely result in a continuation of dumping, which considers a significant decline in imports following imposition of a suspension agreement as highly probative of a likelihood to continue dumping in the absence of an agreement (or order). Domestic interested parties specifically rebut the Embassy's contention that a failure to negotiate a reference price for one particular grade of CTL plate adequately accounted for the steep decline in import volumes. Domestic interested parties argue that the Embassy's case brief provides no "documentation that API-2Y was a significant portion of Ukrainian producers' sales during the period of investigation... [and I]kewise, there was no showing that reference prices for any other grades would have had any appreciable impact on Ukraine's exports of plate to the United States."⁹ In addition, domestic interested parties point out "apparent inconsistencies" in the Embassy's arguments, stating,

Ukraine's [case brief] fail[s] to explain how the Department's issuance of a reference price for API-2Y would lead to increased imports of subject merchandise from Ukraine given the separate claim that reference prices were set too high to permit sales. If...the reference price methodology made their products uncompetitive in the U.S. market, the issuance of a reference price for one more product[s] would have made little difference in the level of imports of Ukrainian plate into the U.S. market.¹⁰

Domestic interested parties address the Embassy's complaints regarding reference price calculation methodology by arguing that such complaints are not relevant following adoption of the

⁹ See Rebuttal Brief from Bethlehem Steel Corporation and United States Steel Corporation (February 14, 2003) at 6.

¹⁰ Id.

Agreement, and, further, have little relevance to the substance of a sunset review.¹¹ Lastly, domestic interested parties rebut the Embassy's assertions that the imposition of Section 201 safeguard measures on certain steel products explains, in part, the decrease in Ukraine's CTL plate imports, arguing that such safeguard measures only affected the final six months of the Agreement and, therefore, do not account for the longer term decline in imports.

For the foregoing reasons, domestic interested parties claim that sales at less than fair value would continue or recur without the discipline of an agreement 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. 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

¹¹ Id.

determinations. The Department clarified that a determination of likelihood will be made on an order-wide basis.¹² 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.¹³

To date, no administrative reviews have been requested, and, therefore, no dumping margins have been calculated since imposition of the Agreement.¹⁴ However, the Department has monitored imports of CTL plate from Ukraine over the life of the suspension agreement. For the purposes of this sunset review, we considered the volume of imports for the period before and after the suspended investigation.

In 1996, the year the Department initiated the antidumping investigation on CTL plate from Ukraine, imports of CTL plate from Ukraine amounted to 569,533,040 kg. In 1997, as a result of the negotiated suspension agreement, the Department set quota limits significantly below pre-investigation

¹² See section II.A.2 of the *Sunset Policy Bulletin*.

¹³ *Id.*

¹⁴ 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.

volumes: 158,000,000 kg from imposition of the Agreement through October 31, 1998¹⁵; 148,520,000 kg for November 1, 1998, through October 31, 1999¹⁶; 157,431,000 kg for November 1, 1999, through October 31, 2000¹⁷; 147,985,000 kg for November 1, 2000, through October 31, 2001¹⁸; and 139,106,000 kg for November 1, 2001, through October 31, 2002.¹⁹ The actual import volumes of CTL plate from Ukraine during the suspension period are as follows: 167,482,022 kg in 1997, 134,581,537 kg in 1998, 3,459,600 kg in 1999, 25,970,220 kg in 2000, and 28,409,238 kg in 2001.²⁰

As the import statistics indicate, the import volumes of CTL plate from Ukraine in the first two years of the suspension period (1997 and 1998) are at the level of quota limits set as a result of the Agreement. Subsequent to 1998, however, import volumes declined drastically and remained significantly lower than the established quota limits over the remainder of the five-year sunset review period (1999-2001). Specifically, import volumes dropped to five percent of established quota limits and never rose above 25 percent thereafter. The Department considers that volumes significantly below Agreement quota levels indicate that producers could not sell in adequate volumes at established reference prices. As a result, if the Agreement were terminated and the reference price eliminated, the

¹⁵ See Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From Ukraine, 62 FR 61766, 61768 (October 24, 1997).

¹⁶ See Letter from Joseph A. Spetrini to Igor Gaiduchak (September 1, 1998).

¹⁷ See Letter from Joseph A. Spetrini to Sergei Gryshchenko (August 31, 1999).

¹⁸ See Letter from Joseph A. Spetrini to Sergei Gryshchenko (September 1, 2000).

¹⁹ See Letter from Joseph A. Spetrini to Sergei Gryshchenko (August 29, 2001).

²⁰ United States Bureau of the Census trade statistics.

Department considers that dumping would likely continue or recur.

The Department agrees with domestic interested parties that the Embassy provided no evidence that an established reference price for an additional grade of steel plate would have markedly increased Ukrainian CTL plate exports. Further, a sunset review is not the forum to dispute reference price calculation methodology. The proper forum to challenge such methodologies is in an administrative review. In addition, the Department does not find the added safeguard measures sufficiently account for the decline in import volumes since volumes substantially declined several years prior to the imposition of the safeguard measures.

Therefore, based upon the level of import volumes comparative to Agreement quota limits and to pre-investigation levels, we find that dumping is likely to continue or recur if the Agreement were terminated.

2. Magnitude of the Margin Likely to Prevail

Department's Position:

In the Sunset Policy Bulletin, the Department stated that it will normally provide to ITC 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.²¹

The Department calculated dumping margins for Ukrainian manufacturers, producers, and

²¹ See section II.B.1 of the *Sunset Policy Bulletin*.

exporters of CTL plate, including a “Ukraine-wide” rate of 237.91 percent. Neither party has argued that the Department should report to the ITC rates other than those calculated for purposes of the original investigation. Consequently, the Department will report to the ITC 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 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:

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 we received subsequent to the publication of our preliminary results, 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*.

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

(Date)