



A-821-808
Sunset Review
Public Document
ITA/E&C/OP&N/OP/BAU: JJM

March 3, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Ryan Majerus *RMM*
Deputy Assistant Secretary
for Policy and Negotiations

RE: Issues and Decision Memorandum for the Expedited Fourth
Sunset Review of the Agreement Suspending the
Antidumping Investigation of Certain Cut-to-Length
Carbon Steel Plate from the Russian Federation; Final
Results

I. 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 the Russian Federation (Agreement) and suspended investigation.¹ 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:

1. Likelihood of Continuation of Recurrence of Dumping
2. Magnitude of Margin Likely to Prevail

II. BACKGROUND

On November 3, 2020, Commerce published the notice of initiation of the fourth five-year sunset review of the suspended antidumping duty investigation of certain cut-to-length carbon steel plate (CTL plate) from the Russian Federation (Russia).² In accordance with 19 CFR 351.218(d)(1)(i), Commerce received timely notices of intent to participate in this sunset review from: SSAB Enterprises LLC (SSAB), on November 13, 2020; ArcelorMittal USA LLC (ArcelorMittal), on November 16, 2020; Nucor Corporation (Nucor), on November 16, 2020; and JSW Steel (USA) Inc. (JSW), on November 18, 2020. All parties claimed domestic interested party status under section 771(9)(C) of the Act by stating that they are producers in the

¹ See *Suspension of Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 68 FR 3859 (January 27, 2003) (Agreement).

² See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 69585 (November 3, 2020).



United States of the domestic like product. On November 30, 2020, ArcelorMittal, Nucor, and SSAB (collectively, Domestic Producers) jointly filed timely, complete, and adequate substantive responses.³ Commerce did not receive a substantive response from any Russian producer/exporter of the subject merchandise.

On December 23, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁴ As a result, pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the Agreement and suspended investigation.

III. SCOPE OF THE AGREEMENT

For purposes of this Agreement, the products covered are 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 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 this petition 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 bevelled 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, 7212.50.0000. Excluded from the subject merchandise within the scope of this Agreement is grade X-70 plate. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

IV. HISTORY OF THE CURRENT AND PRIOR AGREEMENTS

On December 3, 1996, the Department of Commerce (Commerce) initiated an antidumping duty investigation under section 732 of the Act on certain cut-to-length carbon steel plate (CTL plate) from the Russian Federation (Russia).⁵ On December 20, 1996, the United States International Trade Commission (ITC) notified Commerce of its affirmative preliminary injury

³ See Letter from Domestic Producers, “Certain Cut-to-Length Carbon Steel Plate from Russia: Domestic Interested Parties’ Substantive Response to Notice of Initiation,” dated November 30, 2020 (Substantive Response).

⁴ See Commerce’s Letter, “Sunset Review for November 2020,” dated December 23, 2020.

⁵ 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).

determination.⁶ On June 11, 1997, Commerce preliminarily determined that CTL plate from Russia was being, or was likely to be, sold in the United States at less than fair value.⁷

Commerce suspended the antidumping duty investigation on October 24, 1997, on the basis of an agreement by the Government of Russia to restrict the volume of direct and indirect exports to the United States of CTL plate from all Russian producers/exporters and to revise its prices to eliminate completely sales of this merchandise to the United States at less than fair value.⁸ Thereafter, Commerce completed its investigation and published in the *Federal Register* its final determination of sales at less than fair value. In the *Final Determination*, Commerce calculated weighted-average dumping margins of 53.81 percent for JSC Severstal (Severstal) and 185.00 percent for the “Russia-wide” entity.⁹

On June 6, 2002, based on the evidence of Russian economic reforms to that date, Commerce revoked Russia’s status as a non-market economy country under section 771(18)(B) of the Act, effective on April 1, 2002.¹⁰ On December 20, 2002, Commerce and three Russian CTL plate producers, Severstal, JSC Magnitogorsk Iron and Steel Works, and JSC NOSTA (OKIW) Integrated Iron-Steel Works, signed a revised suspension agreement pursuant to section 734(b) of the Act. The effective date of the Agreement was January 23, 2003.¹¹ The Agreement remains in effect for substantially all manufacturers, producers, and exporters of CTL plate from Russia.

In January 2003, Commerce completed its first sunset review of the suspended investigation and found that termination of the suspended antidumping duty investigation on CTL plate from Russia would be likely to lead to a continuation or recurrence of dumping.¹² The ITC determined on September 4, 2003, that termination of the suspended investigation on CTL plate from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹³ As a result of both determinations, the suspended investigation was continued for an additional five-year period, effective on September 17, 2003.¹⁴

⁶ See U.S. International Trade Commission, “Cut-to-length Carbon Steel Plate from China, Russia, South Africa, and Ukraine, Investigations Nos. 731-TA-753-756 (Preliminary)” (December 1996).

⁷ See *Preliminary Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 31967 (June 11, 1997).

⁸ See *Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61780 (November 19, 1997) (1997 Suspension Agreement).

⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787, 61794 (November 19, 1997) (*Final Determination*). The term “Russia-wide” rate is now superseded by the term “all others” rate since the Agreement replaced the 1997 Suspension Agreement, which was entered into under section 734(l) of the Act (the non-market-economy section of the statute pertaining to suspension agreements).

¹⁰ See Memorandum for Faryar Shirzad, Assistant Secretary, Import Administration, “Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law,” dated June 6, 2002.

¹¹ See Agreement.

¹² See *Final Results of Expedited Sunset Review: Cut-to-Length Carbon Steel Plate from the People’s Republic of China, the Russian Federation, and South Africa*, 68 FR 1038 (January 8, 2003).

¹³ See *Cut-to-Length Carbon Steel Plate from China, Russia, and Ukraine, Investigations Nos. 731-TA-753-756 (Review)*, 68 FR 52614 (September 4, 2003).

¹⁴ 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).

In May 2008, Commerce completed an administrative review of the Agreement, for the review period from January 1, 2006 through December 31, 2006. Commerce found in its final results that Severstal (the only respondent party covered by the review) had been in compliance with the Agreement.¹⁵

In December 2008, Commerce completed its second sunset review of the suspended investigation and found that termination of the Agreement and the underlying antidumping duty investigation on CTL plate from Russia would likely lead to a continuation or recurrence of dumping.¹⁶ The ITC determined on October 26, 2009, that termination of the suspended antidumping duty investigation on CTL plate from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹⁷ As a result of both determinations, the suspended investigation was continued for an additional five-year period, effective on November 10, 2009.¹⁸

In December 2013, Commerce completed a second administrative review of the Agreement for the review period from January 1, 2012 through December 31, 2012. In its final results of that review, Commerce found that Severstal (the only respondent party covered by the review) had adhered to the terms of the Agreement and that the Agreement was functioning as intended.¹⁹

In January 2015, Commerce completed its third sunset review of the suspended investigation and found that termination of the Agreement and the underlying antidumping duty investigation on CTL plate from Russia would likely lead to a continuation or recurrence of dumping.²⁰ The ITC determined on December 3, 2015, that termination of the suspended antidumping duty investigation on CTL plate from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²¹ As a result of both determinations, the suspended investigation was continued for an additional five-year period, effective on December 21, 2015.²²

¹⁵ See *Certain Cut-to-Length Carbon Steel Plate from the Russian Federation; Final Results of Administrative Review of the Suspension Agreement*, 73 FR 27796 (May 14, 2008).

¹⁶ See *Certain Cut-to-Length Carbon Steel Plate from Russia; Final Results of Expedited Sunset Review of the Suspension Agreement*, 73 FR 74461 (December 8, 2008).

¹⁷ See *Cut-to-Length Carbon Steel Plate From China, Russia, and Ukraine, Investigations Nos. 731-TA-753, 754, and 756 (Second Review)*, 74 FR 56666 (November 2, 2009).

¹⁸ See *Continuation of Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China and Continuation of Suspended Antidumping Duty Investigations on Certain Cut-to-Length Carbon Steel Plate from the Russian Federation and Ukraine*, 74 FR 57994 (November 10, 2009).

¹⁹ See *Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate From the Russian Federation; Final Results of Antidumping Duty Administrative Review*, 78 FR 73827 (December 9, 2013) (Second Review Results).

²⁰ See *Certain Cut-to-Length Carbon Steel Plate From the Russian Federation and Ukraine; Final Results of the Expedited Third Sunset Reviews of the Suspension Agreements*, 80 FR 6052 (February 4, 2015).

²¹ See *Cut-to-Length Carbon Steel Plate From China, Russia, and Ukraine, Investigation Nos. 731-TA- 753, 754, and 756 (Third Review)*, 80 FR 76575 (December 9, 2015).

²² See *Continuation of Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China and Continuation of Suspended Antidumping Duty Investigations on Certain Cut-to-Length Carbon Steel Plate From the Russian Federation and Ukraine*, 80 FR 79306 (December 21, 2015). Commerce issued a correction for this notice pertaining to the initiation date of the fourth sunset review. See *Continuation of*

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

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether termination of the Agreement and 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, Commerce shall consider the weighted-average dumping margins determined in the investigations and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order or the acceptance of a suspension agreement.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action,²³ the House Report,²⁴ and the Senate Report,²⁵ Commerce's determination of likelihood will be made on an order-wide (or suspension agreement-wide) basis, rather than on a company-specific basis.²⁶ In addition, Commerce normally determines that revocation of an antidumping duty order or termination of a 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.²⁷

Alternatively, Commerce normally will determine that revocation of an antidumping duty order or termination of a suspended investigation, as appropriate, would not be likely to lead to continuation or recurrence of dumping where dumping margins declined or were eliminated and import volumes remained steady or increased after issuance of the order or suspension agreement.²⁸ In addition, as a base period of import volume comparison, it is Commerce'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

Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China and Continuation of Suspended Antidumping Duty Investigations on Certain Cut-to-Length Carbon Steel Plate From the Russian Federation and Ukraine: Notice of Correction, 81 FR 8042 (February 17, 2016).

²³ See Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (SAA).

²⁴ See House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

²⁵ See Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

²⁶ See SAA at 879; House Report at 56.

²⁷ 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*).

²⁸ See SAA at 889-90; House Report at 63; and Senate Report at 52.

of an investigation may dampen import volumes and, thus, skew the comparison.²⁹ When analyzing import volumes, Commerce'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.³⁰

Commerce has also explained that the data pertaining to weighted-average dumping margins and import volumes may not be conclusive in determining the likelihood of future dumping.³¹ Thus, in the context of the sunset review of a suspended investigation, Commerce may be more likely to take other factors into consideration, provided good cause is shown. Therefore, in accordance with 752(c)(2) of the Act, Commerce shall also consider such other price, cost, market, or economic factors as it deems relevant when good cause is shown.

Furthermore, section 752(c)(3) of the Act states that the magnitude of the dumping margin likely to prevail if the orders were revoked or the suspended investigation is terminated shall be provided by Commerce to the ITC. Section 752(c)(3) also instructs that Commerce "shall normally choose a margin that was determined under section 735 or under subsection (a) or (b)(1) of section 751." Generally, Commerce selects the weighted-average dumping 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.³² In certain circumstances, however, a more recently calculated rate may be more appropriate.³³

In February 2012, Commerce 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.³⁴ In the *Final Modification for Reviews*, Commerce 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).³⁵ To that end, Commerce 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

²⁹ 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.

³⁰ See *Ferrovanadium 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.

³¹ See SAA at 890.

³² *Id.*; 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.

³³ 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.

³⁴ 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*).

³⁵ *Id.*

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.”³⁶

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require Commerce 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.³⁷

Below we address the comments of the domestic interested parties.

VI. DISCUSSION OF THE ISSUES

1. Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Parties’ Comments³⁸

- The domestic interested parties argue that termination of the suspended antidumping duty investigation on CTL plate from Russia would be likely to lead to the continuation or recurrence of dumping.³⁹
- Specifically, the domestic interested parties contend that imports of CTL plate from Russia decreased dramatically following the implementation of the 1997 Suspension Agreement.⁴⁰
- Imports declined from 252,398 short tons in 1996, prior to the investigation, to 158,511 short tons in 1997 following the implementation of the 1997 Suspension Agreement.⁴¹
- Imports dropped further to 17,390 short tons in 1999 and 86 short tons in 2019.⁴²
- The decline in import volumes following the implementation of the Agreement confirms that there is a strong likelihood that dumping would continue or recur in the absence of the Agreement.⁴³
- Dumping has continued at levels above *de minimis* since the issuance of the Agreement.
- In the administrative proceedings thus far, Commerce has continued to rely on the Russia-wide dumping margin of 185 percent.⁴⁴
- The continued existence of these high margins, the domestic interested parties argue, is sufficient by itself to conclude that dumping is likely to continue or recur if the suspended investigation is terminated.⁴⁵

Commerce’s Position

³⁶ *Id.*

³⁷ *See SAA* at 890.

³⁸ *See* Substantive Response.

³⁹ *Id.* at 4.

⁴⁰ *Id.* at 10.

⁴¹ *Id.*

⁴² *Id.* at 9-10.

⁴³ *Id.* at 10.

⁴⁴ *Id.* at 11.

⁴⁵ *Id.*

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) and (B) of the Act instruct Commerce 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. “{D}eclining 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.”⁴⁶

Commerce also explained that the data pertaining to weighted-average dumping margins and import volumes may not be conclusive in determining the likelihood of future dumping.⁴⁷ Thus, in the context of the sunset review of a suspended investigation, Commerce may be more likely to take other factors into consideration, provided good cause is shown. Therefore, in accordance with 752(c)(2) of the Act, Commerce shall also consider such other price, cost, market, or economic factors as it deems relevant when good cause is shown. However, Commerce determines that other factors are not relevant in this case because the record evidence is dispositive. For the reasons detailed below, we find that termination of the Agreement and suspended investigation 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 volumes since the issuance of the Agreement.

First, we considered whether termination of the Agreement and suspended investigation is likely to lead to continuation or recurrence of dumping where “dumping continued at any level above *de minimis*” after issuance of the Agreement.⁴⁸ In the *Final Determination*, Commerce calculated an above *de minimis* rate for certain Russian producers and exporters during the investigation.⁴⁹ No more recently calculated margins exist. Moreover, the dumping margin for companies other than the individually investigated respondents in the antidumping investigation was based on the dumping margins in the petition, as adverse facts available;⁵⁰ therefore, it does not include zeroing and is consistent with the *Final Modification for Reviews*.⁵¹ As such, we find the weighted-average dumping margins determined in the suspended investigation – up to a rate of 185.00 percent – demonstrative of the behavior of Russian manufacturers, producers, and exporters without the discipline of a suspension agreement in place.

Regarding import levels, import data released by the ITC indicate that imports declined significantly following the issuance of the Agreement.⁵² Commerce finds that, in the five years following the third sunset review, imports remained significantly lower than in 1996, the year

⁴⁶ See *SAA* at 889.

⁴⁷ *Id.* at 890.

⁴⁸ See *Sunset Policy Bulletin*.

⁴⁹ See *Final Determination*, 62 FR at 61794.

⁵⁰ *Id.*, 62 FR at 61788.

⁵¹ See *Final Modification for Reviews*, 77 FR at 8103.

⁵² See Substantive Response at Exhibit I; see also Appendix 1.

prior to filing of the petition. Indeed, imports in each year from 2016 through 2020 ranged from less than one percent to less than nine percent of pre-petition import volumes.⁵³

Based on this information, Commerce finds that the continued decrease in import volumes after issuance of the Agreement is highly probative of the likelihood of continuation or recurrence of dumping. Declining import volumes after the issuance of the Agreement provide a strong indication that, absent the Agreement, dumping would be likely to continue or recur if the Agreement and suspended investigation were terminated.⁵⁴

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

2. Magnitude of the Margin Likely to Prevail

Domestic Interested Parties' Comments⁵⁵

- By statute, Commerce reports to the ITC the magnitude of the margin likely to prevail if a suspended investigation is terminated.⁵⁶
- Commerce will generally select a margin from the investigation because that is the only calculated margin that reflects the behavior of exporters without a suspension agreement in place.⁵⁷
- Commerce should therefore report to the ITC the dumping margins of 53.81 percent for Severstal and 185 percent for the Russia-wide rate.⁵⁸
- The *Final Modification for Reviews* should have no effect on the reported magnitude of the margins likely to prevail if a suspended investigation is terminated, because the *Final Modification for Reviews* applies to antidumping duty orders.⁵⁹
- Regarding the “all others” rate, which was based off of adverse facts available, the *Final Modification for Reviews* does not apply, because there is no evidence that Commerce used zeroing in calculating this margin.⁶⁰

Commerce's Position

As discussed in the Legal Framework section above, section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to

⁵³ See Appendix 1.

⁵⁴ 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.”

⁵⁵ See Substantive Response at 11.

⁵⁶ *Id.*

⁵⁷ *Id.* at 11-12.

⁵⁸ *Id.* at 12.

⁵⁹ *Id.*

⁶⁰ *Id.*

prevail if the order is revoked, or a suspension agreement is terminated. Normally, Commerce will provide to the ITC the company-specific, weighted-average antidumping duty margin from the investigation for each company.⁶¹ Commerce'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.⁶²

Commerce has determined that the antidumping duty margin established in the final determination of the investigation for all companies not individually examined is representative of the magnitude of the margins of dumping likely to prevail if the suspended investigation were terminated. This dumping margin is a rate from the investigation, and no new margins have been calculated in subsequent administrative reviews of either the 1997 Suspension Agreement or the Agreement. We further determine that Commerce can continue to rely on this dumping margin, which is the rate being reported to the ITC, because, as noted above, it is consistent with the *Final Modification for Reviews* because it was based on total facts available derived from the rates alleged in the petition and did not involve zeroing, *i.e.*, the denial of offsets.⁶³ Accordingly, we find it appropriate to provide the ITC with the rate from the final determination in the investigation that applied to all non-individually examined companies because this rate best reflects the behavior of exporters without the discipline of the Agreement in place.

VII. FINAL RESULTS OF SUNSET REVIEW

We determine that termination of the Agreement and suspended investigation of CTL plate from Russia would likely lead to continuation or recurrence of dumping and that the magnitude of the dumping margin likely to prevail would be weighted-average margins of up to 185.00 percent.

⁶¹ See *SAA* at 890; *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 n.9 (CIT 1999) (*Eveready Battery*).

⁶² See *SAA* at 890; *Eveready Battery*, 77 F. Supp. 2d at 1333 n.9.

⁶³ See *Final Modification for Reviews* and *Final Determination* (explaining that the Russia-wide entity was uncooperative and that the Russia-wide rate is based on "total facts available," namely, "the average petition rate" of 185.00 percent).

VIII. RECOMMENDATION

Based on our analysis of the substantive response 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

3/3/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

APPENDIX 1

Imports of CTL Plate from Russia: First Unit of Quantity

U.S. Imports for Consumption

Annual Data

	1996	1997		2014	2015	2016	2017	2018	2019	2020
Metric Tons	228,972	143,799		55,869	12,428	9,953	20,070	37	78	69

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