



A-823-808
2020 Sunset Review
Public Document
ITA/E&C/P&N/OP/BAU: Team

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

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

I. SUMMARY

We have analyzed the substantive responses submitted by domestic interested parties in the fourth sunset review of the Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine (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 or 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 sunset review of the suspended antidumping duty investigation of certain-cut-to-length carbon steel plate (CTL plate) from Ukraine, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² Pursuant to 19 CFR 351.218(d)(1)(i), Commerce received timely and complete notices of intent to participate in this sunset review from SSAB Enterprises LLC (SSAB) on November 13, 2020,³

¹ See *Suspension of Antidumping Investigation: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 73 FR 57602 (October 3, 2008) (Agreement).

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

³ See Letter from SSAB, “Notice of Intent to Participate in the Fourth Five-Year Review of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from Ukraine,” dated November 13, 2020.



from ArcelorMittal USA LLC (AMUSA)⁴ and Nucor Corporation (Nucor)⁵ on November 16, 2020, and from JSW Steel (USA) Inc. (JSW) on November 18, 2020.⁶ On November 30, 2020, Commerce received adequate substantive responses from Nucor, AMUSA, and SSAB (collectively, domestic interested parties), jointly filed within the deadline specified in 19 CFR 351.218(d)(3)(i).⁷ Commerce did not receive any responses from the respondent interested parties with respect to this proceeding.

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.⁸ As a result, pursuant to section 751(c)(3)(B) of 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

The merchandise subject to the 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 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 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 Agreement is dispositive. Specifically excluded from subject merchandise within the scope of the Agreement is grade X-70 steel plate.

IV. HISTORY OF THE CURRENT AND PRIOR AGREEMENTS

⁴ See Letter from AMUSA, “Cut-to-Length Carbon Steel Plate from Ukraine – ArcelorMittal USA LLC’s Notice of Intent to Participate,” dated November 16, 2020.

⁵ See Letter from Nucor, “Cut-to-Length Carbon Steel Plate from Ukraine: Notice of Intent to Participate in Review,” dated November 16, 2020.

⁶ See Letter from JSW, “Cut-to-Length Carbon Steel Plate from Ukraine: Notice of Intent to Participate in Review,” dated November 18, 2020.

⁷ See Letter from Nucor, AMUSA, and SSAB, “Certain Cut-to-Length Carbon Steel Plate from Ukraine: Domestic Interested Parties’ Substantive Response to Notice of Initiation,” dated November 30, 2020 (Substantive Response).

⁸ See Commerce’s Letter, “Sunset Review for November 2020,” dated December 23, 2020.

On December 3, 1996, Commerce initiated an antidumping duty investigation under section 732 of Act on CTL plate from Ukraine.⁹ On December 20, 1996, the ITC notified Commerce of its affirmative preliminary injury determination.¹⁰ On June 11, 1997, Commerce preliminarily determined that CTL plate from Ukraine was being, or was likely to be, sold in the United States at less than fair value.¹¹

Commerce suspended the antidumping duty investigation on October 24, 1997, under section 734(l) of the Act (the non-market-economy section of the statute pertaining to suspension agreements), 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.¹² Thereafter, Commerce completed its investigation and published in the *Federal Register* its final determination of sales at less than fair value. Commerce found the following weighted-average dumping margins:¹³

Producer/Exporter	Weighted-Average Margin (percent)
JSC Azovstal Iron & Steel Works (Azovstal)	81.43
JSC Ilyich Iron & Steel Works (Ilyich)	155.00
Ukraine-wide ¹⁴	237.91

In May 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 Ukraine would likely lead to a continuation or recurrence of dumping.”¹⁵ Commerce found that the sharp drop in imports of CTL plate during the period of the 1997 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.”¹⁶ As a result, the suspended investigation was continued for an additional five-year period effective on September 17, 2003.¹⁷

⁹ 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).

¹⁰ 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).

¹¹ 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).

¹² See *Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61766 (November 19, 1997) (1997 Suspension Agreement).

¹³ 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*).

¹⁴ The term “Ukraine-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).

¹⁵ 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.”

¹⁶ *Id.*

¹⁷ 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 2003, Commerce completed an administrative review of the 1997 Suspension Agreement for the review period from November 1, 2000, through October 31, 2001, in which the domestic industry participated. Commerce found that the Ukrainian producers that were reviewed and the Government of Ukraine had complied with the 1997 Suspension Agreement then in effect, but determined not to terminate the agreement “because the continued maintenance of the {1997 Suspension} Agreement is necessary to offset dumping.”¹⁸ 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 1997 Suspension Agreement. The Government of Ukraine was found to be in full compliance with the 1997 Suspension Agreement.¹⁹

On February 17, 2006, based on the evidence of economic reforms to that date, Commerce revoked Ukraine’s status as a non-market-economy country under section 771(18)(B) of the Act, effective on February 1, 2006. Based on a request by certain Ukrainian producers of CTL plate, Commerce converted the non-market-economy suspension agreement to a market-economy agreement. On September 29, 2008, Commerce and representatives of Ukrainian CTL plate producers signed a revised agreement suspending the investigation under section 734(b) of the Act.²⁰ This Agreement became effective November 1, 2008. The Agreement remains in effect for substantially all manufacturers, producers, and exporters of CTL plate from Ukraine.

In March 2009, Commerce 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.”²¹ As a result, the suspended investigation was continued for an additional five-year period effective on November 10, 2009.²²

In November 2013, Commerce completed the first administrative review of the Agreement, covering the period from November 1, 2011 through October 31, 2012. In the final results of that review, Commerce found that Metinvest Holding LLC and its affiliated companies, Azovstal and Ilyich, were in compliance with the terms of the Agreement and that the Agreement was functioning as intended.²³

In 2015, Commerce completed its third sunset review of the suspended investigation and determined that “termination of the {Agreement} on CTL plate from Ukraine would be likely to

¹⁸ 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).

¹⁹ 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).

²⁰ See Agreement.

²¹ 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).

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 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).

²³ 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).

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.”²⁴ As a result, the suspended investigation was continued for an additional five-year period effective on December 21, 2015.²⁵

Finally, Commerce initiated a second administrative review of the Agreement, covering the period from November 1, 2018 through October 31, 2019.²⁶ This review is ongoing as of the date of this memorandum.

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 conducted 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 (SAA),²⁷ the House Report,²⁸ and the Senate Report,²⁹ Commerce’s determination of likelihood will be made on an order-wide (or suspension agreement-wide) basis, rather than on a company-specific basis.³⁰ In addition, Commerce normally determines that revocation of an antidumping duty order or termination of a suspended investigation, 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

²⁴ 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) and accompanying Issues and Decision Memorandum at 9-10.

²⁵ 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).

²⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 3014, 3023 (January 17, 2020).

²⁷ See SAA, H.R. Doc. 103-316, vol. 1 (1994).

²⁸ See House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

²⁹ See Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

³⁰ See SAA at 879; House Report at 56.

eliminated after the issuance of the order or suspension agreement and import volumes for the subject merchandise declined significantly.³¹

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.³² 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 of an investigation may dampen import volumes and, thus, skew the comparison.³³ When analyzing import volumes for second and subsequent sunset reviews, 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.³⁴

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.³⁵ 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 Commerce shall provide to the ITC the magnitude of the dumping margin likely to prevail if the orders were revoked or the suspended investigation is terminated. 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.³⁶ In certain circumstances, however, a more recently calculated rate may be more appropriate.³⁷

In February 2012, Commerce announced that it was modifying its practice in sunset reviews such that it would not rely on weighted-average dumping margins that were calculated using the

³¹ 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*).

³² See SAA at 889-90; House Report at 63; and Senate Report at 52.

³³ 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.

³⁴ 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 at 3.

³⁵ See SAA at 890.

³⁶ *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.

³⁷ See SAA at 890-891.

methodology found to be World Trade Organization (WTO)-inconsistent, *i.e.*, zeroing/the denial of offsets.³⁸ 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).³⁹ 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 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.”⁴⁰

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 order or termination of a suspended investigation would not be likely to lead to a continuation or recurrence of sales at less than fair value.

Below we address the comments submitted by the domestic interested parties.

VI. DISCUSSION OF THE ISSUES

1. Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Parties’ Comments⁴¹

- The domestic interested parties claim that the revocation of the Agreement is likely to lead to the continuation or recurrence of dumping. Additionally, subject imports have declined significantly since the Agreement was instituted, therefore the record of this proceeding demonstrates that the Agreement has been functioning as intended.
- The domestic interested parties argue that Commerce normally determines that termination of a suspended investigation is likely to lead to the continuation or recurrence of dumping where “dumping continued at any level above *de minimis*” after implementation of the Agreement.⁴²
- Additionally, although Commerce has completed three administrative reviews, no new margins have been calculated during those reviews. As a result, the dumping margins determined in the underlying investigation continue to exist for all shipments of the subject merchandise. Since dumping of subject merchandise continues at above *de minimis* margins and that is, itself, sufficient for Commerce to conclude that Ukrainian

³⁸ 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*).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See Substantive Response at 8-12.

⁴² *Id.* at 11.

producers are likely to continue to engage in dumping in the absence of the Agreement or order.⁴³

- The domestic interested parties further argue that imports of CTL plate from Ukraine declined significantly following the issuance of the Agreement. The parties cite to import statistics to support this argument. For example, imports from Ukraine were 627,796 short tons in 1996, prior to the filing of the petition, and 184,615 short tons in 1997 after the case was initiated. Since then, imports continued to fall, as evidenced by the most recent data point provided, from January to September 2020, when only 11 short tons of CTL plate were imported from Ukraine.⁴⁴ The domestic interested parties assert that the imposition of the Agreement directly impacted the level of imports from Ukraine. The dramatic decline in imports warrant the continuation of the suspension agreement.

Commerce'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) 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.”⁴⁵

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.⁴⁶ 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.

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.⁴⁷ With respect to dumping margins, Commerce calculated an above *de minimis* rate for certain Ukraine producers and exporters during the

⁴³ *Id.*

⁴⁴ *Id.* at 12.

⁴⁵ See SAA at 889.

⁴⁶ *Id.* at 890.

⁴⁷ See *Sunset Policy*, 63 FR at 18872.

investigation.⁴⁸ More recently calculated margins do not 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 petition⁴⁹ and, therefore, does not include zeroing and is consistent with the *Final Modification for Reviews*.⁵⁰ As such, we find the weighted-average dumping margins determined in the suspended investigation – up to a rate of 237.91 percent – to be 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 indicate that imports declined significantly following suspension of the investigation.⁵¹ Commerce finds that, in the five years following the third sunset review, imports remained significantly lower than in 1996, the year prior to filing of the petition. Indeed, imports in each year from 2016 through 2020 ranged from less than one percent to just over nine percent of pre-petition import volumes.⁵²

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.⁵³

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 Margins Likely to Prevail

Domestic Interested Parties' Comments⁵⁴

- The domestic interested parties argue that, consistent with the *SAA* and the *Sunset Policy*, Commerce should report to the ITC the margins from the original investigation: 81.43 percent for Azovstal, 155.00 percent for Ilyich, and 237.91 percent for the Ukraine-wide rate.
- The domestic parties state that the “all others” rate was based on total adverse facts available, and there is no evidence that the margins for Azovstal and Ilyich were calculated using zeroing. Therefore, the *Final Modification for Reviews* has no effect on

⁴⁸ See *Final Determination*, 62 FR at 61760.

⁴⁹ *Id.*

⁵⁰ See *Final Modification for Reviews*.

⁵¹ See Appendix 1 (USITC DataWeb import statistics).

⁵² *Id.*

⁵³ 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.”

⁵⁴ See Substantive Response at 13-14.

the domestic interested parties' conclusion that the dumping margins from the underlying investigations as those likely to prevail.

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 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.⁵⁵ 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.⁵⁶

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, 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 adverse facts available derived from the rates alleged in the petition and did not involve zeroing, *i.e.*, the denial of offsets.⁵⁷ 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 Ukraine 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 237.91 percent.

⁵⁵ 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 Issued and Decision Memorandum at Comment 2.

⁵⁶ See SAA at 890; see also *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 n.9 (CIT 1999).

⁵⁷ See *Final Modification for Reviews* and *Final Determination* (explaining that the rate calculated for all non-individually examined respondents is based on "adverse total facts available," namely, "the average petition rate of 237.91 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 Ukraine: First Unit of Quantity

U.S. Imports for Consumption

Annual Data

	1996	1997		2014	2015	2016	2017	2018	2019	2020
Metric Tons	569,533	167,482		3	3,230	9,250	53,238	43,122	32,366	10

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