



A-823-808

Suspension Agreement – Admin Review

11/1/18 – 10/31/19

Public Document

ITA/E&C/P&N/OP/BAU: Team

March 18, 2021

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

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

**SUBJECT:** Decision Memorandum for the Preliminary Results of the 2018-  
2019 Administrative Review of the Agreement Suspending the  
Antidumping Investigation of Certain Cut-to-Length Carbon Steel  
Plate from Ukraine

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## I. SUMMARY

In accordance with section 751(a)(1)(C) of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is conducting an administrative review of the current status of, and compliance with, the Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine (Agreement) for the November 1, 2018 through October 31, 2019 period of review (POR). For the reasons stated in this memorandum, Commerce preliminarily finds that signatory producers/exporters Azovstal Iron & Steel Works (Azovstal) and Ilyich Iron and Steel Works (Ilyich), which are subsidiaries of Metinvest Holding LLC (Metinvest) and were individually examined in this review, are in compliance with the Agreement and that the Agreement is meeting the statutory requirements under sections 734(b) and (d) of the Act.

## II. BACKGROUND

On September 29, 2008, Commerce and Ukrainian producers/exporters, Azovstal, Ilyich, and OJSC Alchevsk Iron and Steel Works (Alchevsk), signed an agreement under section 734(b) of the Act suspending the antidumping duty investigation of certain cut-to-length carbon steel plate (CTL plate) from Ukraine.<sup>1</sup> On November 27, 2019, pursuant to an *Opportunity to Request Review*,<sup>2</sup> domestic interested party Nucor Corporation (Nucor) submitted a request for an

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

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 84 FR 58690 (November 1, 2019) (*Opportunity to Request Review*).



administrative review of the Agreement and Metinvest, its subsidiary Azovstal, and any other subsidiaries or affiliates.<sup>3</sup> On January 17, 2020, Commerce initiated the review.<sup>4</sup> In addition to reviewing the status of the Agreement, Commerce individually examined Azovstal's and Ilyich's compliance with the Agreement for the reasons stated below under "Preliminary Results of Review."

On February 4, 2020, Commerce issued a questionnaire to Azovstal and Ilyich. On March 5 and March 6, 2020<sup>5</sup> Azovstal and Ilyich, collectively as Metinvest, submitted their joint response to Commerce's initial questionnaire. The POR for this administrative review overlaps three semi-annual normal value (NV) proceedings—covering the periods of review, respectively, from July 1, 2018, through December 31, 2018 (NV23), January 1, 2019, through June 30, 2019 (NV24), and July 1, 2019, through December 31, 2019 (NV25). Metinvest submitted on the record of this review its sales and cost data for the relevant overlapping months of NV23 and NV24. NV25 was not completed at the time the initial administrative review questionnaire response was due; as permitted by Commerce, Metinvest submitted its sales and cost data for the relevant overlapping months of NV25 on June 26, July 22, August 28, and November 2, 2020.<sup>6</sup>

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.<sup>7</sup> On July 16, 2020, Commerce extended the due date for issuance of these preliminary results from September 21, 2020, to no later than November 19, 2020.<sup>8</sup> On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.<sup>9</sup> On December 7, 2020,

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<sup>3</sup> See Nucor's Letter, "Certain Cut-to-Length Carbon Steel Plate from Ukraine: Request for Administrative Review," dated November 27, 2019.

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 3014 (January 17, 2020).

<sup>5</sup> See Metinvest's Letter, "2018-2019 Administrative Review of the Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine: Sections A, B, and C Initial Questionnaire Response," dated March 5, 2020 (Metinvest March 5, 2020 IQR); see also Metinvest's Letter, "Administrative Review of the Agreement Suspending the Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine: Request for One-Day Extension of Time to Submit Data Files," dated March 6, 2020.

<sup>6</sup> See Metinvest's Letter, "2018-2019 Administrative Review of the Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine: Supplemental NV25 Data from Sections A through D Initial Questionnaire Response," dated June 26, 2020; Metinvest's Letter, "2018-2019 Administrative Review of the Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine: Supplemental NV25 Sections A, B, and C Supplemental Questionnaire Response," dated July 22, 2020; Metinvest's Letter, "2018-2019 Administrative Review of the Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine: Supplemental NV25 Section D Questions II.A.7 and III.E.2 Initial Questionnaire Response," dated August 28, 2020; and Metinvest's Letter, "2018-2019 Administrative Review of the Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine: NV25 Section D Supplemental Questionnaire Response," dated November 2, 2020 (collectively, Metinvest's NV25 Supplemental to IQR).

<sup>7</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

<sup>8</sup> See Memorandum, "Extension of Deadline for Preliminary Results of the Administrative Review of the Agreement Suspending the Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine," dated July 16, 2020.

<sup>9</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

Commerce extended the due date for issuance of these preliminary results from January 19, 2021, to no later than March 19, 2021.<sup>10</sup>

On December 9, 2020, Commerce issued a supplemental questionnaire in this administrative review to Azovstal and Ilyich.<sup>11</sup> On January 7, 2021, Azovstal and Ilyich submitted their joint response to Commerce's supplemental questionnaire.<sup>12</sup>

No interested party has submitted comments to date.

### **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 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 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, 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 plate.

### **IV. PRELIMINARY RESULTS OF REVIEW**

Commerce is conducting this review in accordance with section 751(a)(1)(C) of the Act, which specifies that Commerce shall “review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.” In this case, Commerce and Ukrainian producers/exporters Azovstal, Ilyich, and Alchevsk signed the Agreement suspending the

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<sup>10</sup> See Memorandum, “Extension of Deadline for Preliminary Results of the Administrative Review of the Agreement Suspending the Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine,” dated December 7, 2020.

<sup>11</sup> See Commerce's Letter, “Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine; Supplemental Questionnaire for the November 1, 2018 through October 31, 2019 Period of Review,” dated December 9, 2020 (Commerce's Supplemental Questionnaire).

<sup>12</sup> See Metinvest's Letter, “2018-2019 Administrative Review of the Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine: Response to the December 9, 2020 Supplemental Questionnaire,” dated January 7, 2021 (Metinvest January 7, 2021 SQR).

antidumping duty investigation on September 29, 2008 under section 734(b) of the Act.<sup>13</sup> Section 734(b) provides that Commerce may suspend an investigation if the exporters of the subject merchandise who account for substantially all of the imports of that merchandise agree to revise their prices to eliminate completely any amount by which the normal value of the merchandise, which is the subject of the agreement, exceeds the export price (or the constructed export price) of that merchandise. In addition, section 734(d) of the Act requires that Commerce be satisfied that suspension of the investigation is in the public interest and that effective monitoring of the agreement is practicable.

Under sections C and D of the Agreement, each signatory producer/exporter requesting NVs pursuant to the Agreement agrees not to sell its subject merchandise to any unaffiliated purchaser in the United States at prices that are less than the NV of the merchandise, as determined by Commerce based on the company's submitted sales and cost information. For this purpose, for any semi-annual period for which a signatory requests NVs pursuant to section C(2) of the Agreement, Commerce calculates the NV in accordance with section 773(e) of the Act, and U.S. price in accordance with section 772 of the Act. Further, Commerce calculates the NV for purposes of the Agreement by adjusting the constructed value; in effect, any expenses uniquely associated with the covered products sold in the domestic market are subtracted from the constructed value, and any such expenses which are uniquely associated with the covered products sold in the United States are added to the constructed value to calculate the NV.<sup>14</sup> Azovstal and Ilyich are the only signatory producers/exporters that requested, and for which Commerce calculated, NVs during the POR. Alchevsk made no such request for NVs during the POR. Therefore, for purposes of reviewing compliance with the Agreement during the POR, Commerce determined to individually examine Azovstal and Ilyich, collectively participating as Metinvest, in this administrative review. Commerce discusses additional business proprietary details regarding Alchevsk in a separate proprietary memorandum.<sup>15</sup>

#### **A. Compliance with the Agreement**

Based on record evidence, Commerce preliminarily finds Metinvest to be in compliance with the terms of the Agreement during the POR. As noted above, the POR overlaps with three NV proceedings for which Metinvest requested NVs pursuant to section C(2) of the Agreement (*i.e.*, NV23, NV24, and NV25). As also noted above, Metinvest submitted on the record of this review its sales and cost data for the overlapping months of NV23 and NV24 (*i.e.*, for the months of November 2018 through June 2019). Then, in supplemental submissions, Metinvest provided sales and cost data related to the months of NV25 (*i.e.*, the months of July 2019 through October 2019).<sup>16</sup> A review of the information submitted for NV23, NV24, and NV25 demonstrates that, pursuant to sections D(1) and D(2) of the Agreement, Metinvest reported to Commerce the sales and cost data required by the Agreement for calculation of NVs for each of the respective

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<sup>13</sup> See Agreement. The Agreement, signed in 2008, succeeded an earlier agreement, signed in 1997, that is no longer effective. See *Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61766 (November 19, 1997).

<sup>14</sup> See Agreement at Appendix B.

<sup>15</sup> See Memorandum, "2018-2019 Administrative Review of the Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine: Preliminary Analysis Proprietary Memorandum," dated concurrently with this memorandum.

<sup>16</sup> See Metinvest March 5, 2020 IQR; see also Metinvest's NV25 Supplemental to IQR.

periods. Therefore, Commerce preliminarily finds Metinvest to be in compliance with the monitoring in sections D(1) and D(2) of the Agreement.

With respect to the requirement in section C that each signatory agrees to revise its prices to eliminate completely any amount by which the NV exceeds the U.S. price of subject merchandise, Metinvest, in its initial questionnaire response, describes how it ensures compliance with the Agreement's pricing terms and with the relevant NV period. Metinvest states that it does so in making sales directly to unaffiliated U.S. customers and in arranging for shipment to the United States.<sup>17</sup> Specifically, Metinvest ensures prices are at or above the relevant NVs with a spreadsheet (Metinvest Normal Value Spreadsheet) that contains the codes for the CONNUMs of the subject merchandise for which NVs are requested, along with their corresponding physical characteristics and the applicable final NVs as released by Commerce.<sup>18</sup> Metinvest states that it updates this spreadsheet when Commerce releases new final NVs and it uses the information from the spreadsheet to establish and control the subject merchandise sold to the U.S. market and the prices at which those goods are sold. According to Metinvest, subject merchandise that is not represented on the spreadsheet is not eligible to be sold to the U.S. market, and subject merchandise that is represented on the Metinvest Normal Value Spreadsheet can only be sold at a price that is at or above the established NVs for the relevant period. Sales managers at Metinvest and its affiliate, Metinvest International S.A. (Metinvest International), are the only officials authorized to set sales prices for subject merchandise, and they use the spreadsheet as a guide to determine whether an NV exists for products being considered for a sale to a U.S. customer and the appropriate pricing for the product during the period of sale.<sup>19</sup> In our review of the information submitted by Metinvest, Commerce preliminarily finds no evidence of non-compliance by Metinvest with respect to ensuring subject merchandise is sold in the United States above the applicable NV. In addition, Commerce has reviewed sales information for Azovstal and Ilyich placed on the record of this review and preliminarily finds no evidence that Metinvest sold subject merchandise in the United States during the POR at prices that are less than the applicable NV.

With respect to third-country and downstream sales, Metinvest explains that it is unaware of any sales of subject merchandise made to a third country which was then sold to the United States during the POR.<sup>20</sup> Metinvest states that it cannot directly monitor where products are sold to unaffiliated companies in third countries after it leaves the control of Metinvest. However, Metinvest notes that all sales of subject merchandise to the United States are made through its affiliate, Metinvest International, and that Metinvest International requires a final destination country to be stated for all sales agreements to all markets.<sup>21</sup> Furthermore, all sales agreements for sales to third countries, according to Metinvest, include an "ANTIDUMPING" clause.<sup>22</sup> Commerce asked Metinvest for further explanation on the issue of third-country sales in its supplemental questionnaire.<sup>23</sup> In its supplemental response, Metinvest confirms that the final third-country destination is identified and reflected in the stated delivery terms on contracts and

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<sup>17</sup> See Metinvest March 5, 2020 IQR at 19.

<sup>18</sup> *Id.* at 20 and Exhibit AR-12.

<sup>19</sup> *Id.* at 19-20.

<sup>20</sup> *Id.* at 21.

<sup>21</sup> *Id.*; and Metinvest January 7, 2021 SQR at SUPP-2-3.

<sup>22</sup> See Metinvest March 5, 2020 IQR at 21.

<sup>23</sup> See Commerce's Supplemental Questionnaire at 3, Questions D.5 and D.6.

commercial invoices issued by other affiliated Metinvest group resellers.<sup>24</sup> Commerce has reviewed the information submitted by Metinvest and preliminarily finds no evidence that imports of subject merchandise into the United States during the POR were in violation of, or otherwise circumvented, the Agreement's terms.

## **B. Status of the Agreement**

When Commerce signed the Agreement on September 29, 2008, we determined that the Agreement met the criteria for 734(b) of the Act, *i.e.*, that the Agreement would eliminate completely sales at less than fair value of the imported subject merchandise. Moreover, in accordance with 734(d) of the Act, Commerce found that the Agreement was in the public interest and the Agreement could be monitored effectively.<sup>25</sup> As described above, Commerce preliminarily finds no evidence that Metinvest sold subject merchandise to any unaffiliated purchaser in the United States at prices that are less than the applicable NV determined by Commerce. Therefore, Commerce preliminarily finds that the Agreement is continuing to meet the statutory requirements of section 734(b) of the Act.

With regard to the requirements of 734(d) of the Act, Commerce preliminarily finds that the Agreement continues to be in the public interest and that effective monitoring of the Agreement continues to be practicable. As Commerce preliminarily finds no evidence during the POR that Metinvest made sales of subject merchandise below the applicable NV, Commerce preliminarily finds that the Agreement continues to benefit U.S. producers by ensuring that imports of the subject merchandise are fairly traded and are not, therefore, negatively impacting the competitiveness of the domestic industry. Moreover, as Commerce preliminarily finds no evidence of non-compliance by Metinvest with the Agreement's extensive information reporting requirements, Commerce preliminarily finds that effective monitoring of the Agreement continues to be practicable. In addition, in the context of this administrative review, no party has alleged that the Agreement is no longer in the public interest or that the Agreement can no longer be effectively monitored. Accordingly, and in light of our preliminary finding that the respondents are in compliance with the statutory requirements of the Agreement, we preliminarily find that the Agreement continues to meet the criteria of sections 734(b) and (d) of the Act.

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<sup>24</sup> See Metinvest January 7, 2021 SQR at SUPP-2-3.

<sup>25</sup> See Agreement, 73 FR at 57603.

## V. RECOMMENDATION

Based on the record evidence discussed above, we recommend preliminarily finding that Azovstal and Ilyich individually, and collectively as Metinvest, are in compliance with the terms of the Agreement and that the Agreement is meeting its statutory requirements under section 734(b) and (d) of the Act. If this recommendation is accepted, we will publish the preliminary results of review in the *Federal Register*.

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\_\_\_\_\_  
Agree

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\_\_\_\_\_  
Disagree

3/18/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance