

January 29, 2015

TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Lynn Fischer Fox
Deputy Assistant Secretary
for Policy and Negotiations
Enforcement and Compliance

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

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 (Suspension Agreement).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 for which we received comments from the domestic interested parties. Respondent interested parties did not participate or comment in this sunset review.

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

Scope of the Suspension Agreement

The scope of the Suspension 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-

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

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

History of the Suspension Agreement

On December 3, 1996, the Department of Commerce (the Department) initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930, as amended (the Act) on certain cut-to-length carbon steel plate (CTL plate) from the Russian Federation.² On December 20, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination.³ On June 11, 1997, the Department preliminarily determined that CTL plate from the Russian Federation was being, or was likely to be, sold in the United States at less than fair value.⁴

The Department suspended the antidumping duty investigation on October 24, 1997, on the basis of an agreement by the Government of the Russian Federation 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.⁵ Thereafter, the Department completed its investigation and published in the Federal Register its final determination of sales at less than fair value. In the final determination, the Department calculated weighted-average dumping margins of 53.81 percent for JSC Severstal (Severstal) and 185.00 percent for “all other” Russian manufacturers, producers, and exporters of the subject merchandise.⁶

² 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).

³ 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).

⁴ 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).

⁵ 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).

⁶ 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).

On June 6, 2002, based on the evidence of Russian economic reforms to that date, the Department revoked Russia's status as a non-market economy country under section 771(18)(B) of the Tariff Act of 1930, as amended (the Act).⁷ On December 20, 2002, a revised suspension agreement pursuant to section 734(b) of the Act was signed by the Department and three Russian CTL plate producers: Severstal, JSC Magnitogorsk Iron and Steel Works, and JSC NOSTA (OKIW) Integrated Iron-Steel Works. The effective date of the Suspension Agreement was January 23, 2003.⁸

In January 2003, the Department completed its first sunset review of the suspended investigation and found that termination of the suspended antidumping duty investigation on CTL plate from the Russian Federation would be likely to lead to a continuation or recurrence of dumping.⁹ The International Trade Commission (ITC) determined on September 4, 2003, that termination of the suspended investigation on CTL plate from the Russian Federation would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹⁰ As a result of both determinations, the suspended investigation was continued for an additional five-year period, effective on September 17, 2003.¹¹

In May 2008, the Department completed an administrative review of the Suspension Agreement, requested by Nucor Corporation (Nucor), for the review period from January 1, 2006 through December 31, 2006. The Department found in its final results that Severstal (the only respondent party covered by the review) had been in compliance with the Suspension Agreement.¹²

In December 2008, the Department completed its second sunset review of the suspended investigation and found that termination of the Suspension Agreement and the underlying antidumping duty investigation on CTL plate from the Russian Federation would likely lead to a continuation or recurrence of dumping.¹³ The ITC determined on October 26, 2009, that termination of the suspended antidumping duty investigation on CTL plate from the Russian Federation would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹⁴ As a result of both determinations,

⁷ See Memorandum for Faryar Shirzad, Assistant Secretary, Import Administration re "Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law" (June 6, 2002).

⁸ See Suspension Agreement.

⁹ 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).

¹⁰ 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).

¹¹ 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).

¹² 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).

¹³ 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).

¹⁴ 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).

the suspended investigation was continued for an additional five-year period, effective on November 10, 2009.¹⁵

Finally, at the request of Nucor, the Department conducted a second administrative review of the Suspension Agreement for the review period from January 1, 2012 through December 31, 2012. In its final results of that review, the Department found that Severstal (the only respondent party covered by the review) had adhered to the terms of the Suspension Agreement and that the Suspension Agreement was functioning as intended.¹⁶

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

Background

On October 1, 2014, the Department published the notice of initiation of the third five-year sunset review of the suspended antidumping duty investigation on CTL plate from the Russian Federation.¹⁷ In accordance with 19 CFR 351.218(d)(1)(i), the Department received timely notices of intent to participate in this sunset review from: SSAB Enterprises LLC (SSAB), on October 9, 2014; ArcelorMittal USA LLC (ArcelorMittal), on October 15, 2014; Evraz Oregon Steel and Evraz Claymont Steel (collectively, “Evraz”), on October 16, 2014; and Nucor, on October 16, 2014. All parties claimed domestic interested party status under section 771(9)(C) of the Act by stating that they are producers in the United States of the domestic like product. We received no notices of intent to participate from respondent interested parties with respect to this proceeding.

In accordance with 19 CFR 351.218(d)(3)(i), complete substantive responses to the Department’s Notice of Initiation were required to be submitted not later than 30 days after publication in the Federal Register. Consistent with 19 CFR 351.218(e)(1)(i)(A), on October 31, 2014, Nucor, ArcelorMittal, and SSAB (collectively, “Domestic Producers”) jointly filed, and Evraz separately filed, timely, complete and adequate substantive responses.¹⁸ The Department did not receive a substantive response from any Russian producer/exporter of the subject merchandise. Pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), because no respondent interested party provided a notice of intent to participate, the Department determined to conduct an expedited (120-day) sunset review of the suspended antidumping duty

¹⁵ 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).

¹⁶ 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).

¹⁷ Initiation of Five-Year (Sunset) Review, 79 FR 59216 (October 1, 2014).

¹⁸ See “Certain Cut-to-Length Carbon Steel Plate from Russia: Substantive Response to Notice of Initiation,” from ArcelorMittal USA LLC, Nucor Corporation, and SSAB Enterprises LLC (October 31, 2014) (Domestic Producers’ Response), and “Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China, the Russian Federation, and Ukraine: Substantive Response from Domestic Producers,” from Evraz Oregon Steel and Evraz Claymont Steel (October 31, 2014) (Evraz’ Response).

investigation on CTL Plate from the Russian Federation.¹⁹ The Department also notified the ITC that no respondent interested parties provided adequate responses, in accordance with 19 CFR 351.218(e)(1)(ii)(C)(1).

Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether termination of the 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, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the acceptance of the suspension agreement. When analyzing import volumes for subsequent sunset reviews, the Department'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.²⁰ In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action,²¹ the House Report,²² and the Senate Report,²³ the Department's determination of likelihood will be made on an order-wide (or suspension agreement-wide) basis, rather than on a company-specific basis.²⁴ In addition, the Department normally determines that revocation of an antidumping duty order or 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.²⁵

Alternatively, the Department normally will determine that revocation of an antidumping duty order or termination of a suspension agreement, as appropriate, would not be likely to lead to continuation or recurrence of dumping where dumping margins declined or were eliminated and

¹⁹ See Memorandum from Sally Craig Gannon to Judith Wey Rudman, re "Sunset Review of the Agreement Suspending the Antidumping Investigation on Certain Cut-to-Length Carbon Steel Plate from the Russian Federation (3rd Review); Adequacy Determination" (November 17, 2014).

²⁰ See Ferrovaniadium 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 "Legal Framework."

²¹ See Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (SAA).

²² See House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

²³ See Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

²⁴ See SAA at 879; House Report at 56.

²⁵ 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).

import volumes remained steady or increased after issuance of the order or suspension agreement.²⁶ In addition, as a base period of import volume comparison, it is the Department'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.²⁷

Further, section 752(c)(3) of the Act states that the Department shall provide to the International Trade Commission (ITC) the magnitude of the margin of dumping likely to prevail if the order or suspension agreement is terminated. Section 752(c)(3) also instructs that the Department "shall normally choose a margin that was determined under section 735 or under subsection (a) or (b)(1) of section 751." Generally, the Department selects the antidumping duty 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, but that in some instances a more recently calculated rate may be more appropriate.²⁸

In February 2012, the Department 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.²⁹ In the Final Modification for Reviews, the Department 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).³⁰ To that end, the Department 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."³¹

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or de minimis shall not by itself require the Department to determine that revocation of an antidumping duty

²⁶ See SAA at 889-90; House Report at 63; and Senate Report at 52.

²⁷ 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.

²⁸ 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.

²⁹ 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).

³⁰ Id.

³¹ Id.

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.³²

Below we address the comments of the domestic interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The Domestic Producers and Evraz contend that termination of the suspended antidumping duty investigation on CTL plate from the Russian Federation would be likely to lead to the continuation or recurrence of dumping at margins at least equivalent to those found in the original investigation. According to the Domestic Producers and Evraz, the record demonstrates that, since the issuance of the Suspension Agreement, dumping has continued at levels above de minimis and shipments of the subject merchandise have decreased significantly.³³

The Domestic Producers state that, in the administrative proceedings completed thus far, the Department has consistently determined that the Suspension Agreement is effective and has continued to rely on a non-zeroing-dependent Russia-wide rate of 185 percent. Accordingly, the Domestic Producers assert that the continued existence of significant dumping rates since the implementation of the Suspension Agreement is, in itself, sufficient for the Department to conclude that dumping is likely to continue or recur if the suspended investigation is terminated.³⁴ The Domestic Producers maintain that, consistent with the SAA and the Sunset Policy Bulletin, the Department should report to the ITC the margins from the original antidumping investigation of 53.81 percent for Severstal and 185 percent for Russia-wide. They contend that the Department calculated the Russia-wide rate by applying, as adverse facts available (AFA), the average margin calculated in the petition and that the Department relied on AFA to calculate certain aspects of Severstal's dumping margin, with no indication that zeroing was applied in calculating that margin. The Domestic Producers maintain that, as such, the Final Modification for Reviews has no effect on this conclusion.³⁵

With respect to import volumes, the Domestic Producers and Evraz cite to import statistics to support their arguments that import volumes of CTL plate from the Russian Federation into the United States have declined significantly since the period prior to the initiation of the investigation and implementation of the 1997 Suspension Agreement and have not returned to pre-agreement volumes.³⁶ According to the Domestic Producers, the imposition of the 1997 Suspension Agreement had an immediate effect on imports of CTL plate from the Russian Federation, with dramatic declines in imports after both the investigation's initiation and the agreement's implementation. In addition, the Domestic Producers contend that significant

³² See SAA at 890.

³³ See Domestic Producers' Response at 9-11. See also Evraz' Response at 8-9.

³⁴ See Domestic Producers' Response at 9.

³⁵ Id at 12.

³⁶ Id at 10-11. See also Evraz' Response at 8-9.

decreases in imports also occurred after both the first and second sunset reviews of the suspended investigation. Evraz asserts that, because CTL plate imports from the Russian Federation declined after the 1997 Suspension Agreement became effective and have not returned to pre-agreement levels, this suggests that producers of subject imports have been unable or unwilling to participate significantly in the U.S. market at prices that are above or close to fair value under the statute.

Department'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)-(B) of the Act instruct the Department 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.” Declining 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.”³⁷ For the reasons below, we find that termination of the Suspension Agreement 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 Suspension Agreement.

We considered whether termination of the Suspension Agreement is likely to lead to continuation or recurrence of dumping where “dumping continued at any level above de minimis” after issuance of the Suspension Agreement.³⁸ With respect to dumping margins, the Department calculated an “all others” rate above de minimis for certain Russian exporters during the investigation.³⁹ No more recently calculated margins exist. Moreover, the dumping margin for “all others” in the antidumping investigation was based on the dumping margins in the petition, as adverse facts available;⁴⁰ therefore, it does not include zeroing and is consistent with the Final Modification for Reviews.⁴¹ As such, we find the weighted-average dumping margins determined in the suspended investigation – specifically the “all others” 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 indicates that imports declined significantly following the issuance of the Suspension Agreement.⁴² The Department found that, in the five years following the second sunset review, imports remained significantly lower than

³⁷ See SAA at 889.

³⁸ See Sunset Policy Bulletin, 63 FR at 18872.

³⁹ See Final Determination, 62 FR at 61794.

⁴⁰ Id., 62 FR at 61788.

⁴¹ See Final Modification for Reviews, 77 FR at 8103.

⁴² See Appendix I (ITC DataWeb import statistics).

in 1996, the year prior to filing of the petition. Indeed, imports in each year from 2009 through 2013 ranged from around one percent to just over half of the pre-petition import volume.⁴³

Based on this information, the Department finds that the continued decrease in import volumes after the issuance of the Suspension Agreement is highly probative of the likelihood of continuation or recurrence of dumping. Declining import volumes after the issuance of the Suspension Agreement provide a strong indication that, absent the agreement, dumping would be likely to continue or recur if the Suspension Agreement were terminated.⁴⁴

Therefore, given the level of dumping found for “all others” in the original investigation and the significant decline in import volumes during the five-year period covered by this third sunset review relative to pre-petition import levels, we find that dumping is likely to continue or recur if the Suspension Agreement were terminated.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments:

The domestic interested parties and Evraz assert that, consistent with the SAA and the Department’s Sunset Policy Bulletin, the Department should provide to the ITC the margins from the original investigation as the dumping margins likely to prevail if the Suspension Agreement were terminated.⁴⁵ The Domestic Producers and Evraz maintain that the margins from the original investigation are the best evidence of the behavior of Russian exporters without the discipline of a suspension agreement in place. The Domestic Producers further assert that the Final Modification for Reviews has no effect on their proposal to report the margins from the original investigation as those likely to prevail.⁴⁶

Department’s Position:

As discussed in the Legal Framework section above, section 752(c)(3) of the Act provides that the Department 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, the Department will provide to the ITC the company-specific, weighted-average antidumping duty margin from the investigation for each company.⁴⁷ The Department’s preference for selecting a

⁴³ Id.

⁴⁴ 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.”

⁴⁵ See Domestic Producers’ Response at 13-14. See also Evraz’ Response at 9-10.

⁴⁶ See Domestic Producers’ Response at 12-13.

⁴⁷ See SAA at 890; Eveready Battery Co., Inc. v. United States, 77 F. Supp. 2d 1327, 1333 n.9 (CIT 1999).

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.⁴⁸

The Department has determined that the “all others” antidumping duty margin established in the final determination of the investigation is representative of the magnitude of the margins of dumping most likely to prevail if the Suspension Agreement were revoked. This dumping margin is a rate from the investigation, and no new margins have been calculated in subsequent administrative reviews. We further determine that the Department can continue to rely on this dumping margin, because, as noted above, the rate being reported to the ITC, the “all others” rate from the investigation, is consistent with the Final Modification for Reviews because it was based on adverse facts available derived from the rates alleged in the petition and did not involve zeroing/the denial of offsets.⁴⁹ Accordingly, we find it appropriate to provide the ITC with the “all others” rate from the final determination in the investigation because this rate best reflects the behavior of exporters without the discipline of the Suspension Agreement in place.

Final Results of Expedited Review

We determine that termination of the Suspension Agreement on CTL plate from the Russian Federation would be likely to 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 185.00 percent.

Recommendation

Based on our analysis of the substantive responses 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 _____

Ronald K. Lorentzen
Acting Assistant Secretary for
Enforcement and Compliance

Date _____

⁴⁸ See SAA at 890; Eveready Battery, 77 F. Supp. 2d at 1333 n.9.

⁴⁹ See Final Modification for Reviews, 77 FR at 8103. See also Final Determination, 62 FR at 61788 (explaining that the “all others” rate is based on adverse facts available, namely, the average petition rate of 185.00 percent).