



A-823-808

Admin Review: 11/01/11 – 10/31/12

**Public Document**

IA/OP/BAU: ASD

**TO:** Paul Piquado  
Assistant Secretary for  
Import Administration

**FROM:** Lynn Fischer Fox *LMFF*  
Deputy Assistant Secretary  
for Policy and Negotiations

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

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## Summary

In response to a request from Nucor Corporation (Nucor), a domestic interested party, the Department of Commerce (the Department) is conducting an administrative review of the agreement suspending the antidumping duty investigation on certain cut-to-length carbon steel plate (CTL plate) from Ukraine for the period November 1, 2011 through October 31, 2012, to review the current status of the Agreement, and compliance with the Agreement, by Metinvest Holding LLC (Metinvest) and its affiliates. For the reasons stated in this memorandum, the Department preliminarily determines that Metinvest and its affiliated companies, Azovstal Iron & Steel Works (Azovstal) and Ilyich Iron and Steel Works (Ilyich), are in compliance with the Agreement and that the Agreement is functioning as intended.

## Scope of the Agreement

See Attachment One.

## Period of Review (POR)

The POR is November 1, 2011 through October 31, 2012.



## Background

On September 29, 2008, the Department signed an agreement under section 734(b) of the Tariff Act of 1930, as amended (the Act), with Ukrainian steel producers/exporters, including Azovstal and Ilyich, suspending the antidumping duty investigation on CTL plate from Ukraine. See Suspension of Antidumping Investigation: Certain Cut-to-Length Carbon Steel Plate from Ukraine, 73 FR 57602 (October 3, 2008) (Agreement).

On November 30, 2012, Nucor submitted a request for an administrative review, pursuant to Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 77 FR 66437 (November 5, 2012), of CTL plate produced or exported by Metinvest or any of its affiliates. The review was initiated on December 31, 2012. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 77017 (December 31, 2012).

Azovstal and Ilyich are both CTL plate producers owned by Metinvest. Metinvest sells the companies' products to the United States.<sup>1</sup> On January 22, 2013, the Department issued its questionnaire to Metinvest, the common parent of Azovstal and Ilyich (collectively, the companies). The companies submitted their joint response on March 1, 2013.

### Preliminary Results of Review

Section 751(a)(1)(C) of the Act specifies that the Department shall "review the current status of, and compliance with, any agreement by reason of which an investigation was suspended." In this case, the Department, Azovstal and Ilyich signed the Agreement suspending the underlying antidumping duty investigation on September 29, 2008. Pursuant to the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of the subject merchandise exceeds the U.S. price of its merchandise subject to the Agreement. See Agreement, 73 FR 57602, 57603. For this purpose, for any semi-annual period for which a signatory requests NVs, the Department calculates the NV in accordance with section 773(e) of the Act, and U.S. price in accordance with section 772 of the Act. See Agreement, 73 FR 57602, 57603. Further, the Department 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. See Agreement, 73 FR 57602, Appendix B.

On January 22, 2013, the Department issued its questionnaire to the companies. The companies submitted their joint response on March 1, 2013. No interested party has submitted comments to

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<sup>1</sup> See, e.g., the Public Version of the February 4, 2011, "Verification Report: Metinvest International, SA" at pages 1 and 2 and Public Version of Metinvest's September 7, 2012, Narrative Section A Questionnaire Response of at pages 8-10.

date. In their questionnaire response, the companies indicate that they are committed to compliance with the Agreement and that their system of compliance has worked well since they began shipping subject merchandise under the Agreement. Further, the companies describe the system which they have established to ensure that each product sold to the United States is sold at or above the relevant NV. See March 1, 2013 Questionnaire Response (QR), pages 2 and 5. Specifically, the companies explained that when the NVs are issued, they are entered in a spreadsheet that correlates the product control numbers, or CONNUMs, to their respective product characteristics, i.e., grade, thickness and width. This spreadsheet is then used for pricing CTL plate sold in the U.S. market in order to ensure that sales are made at or above the corresponding NVs.

In the QR, the companies explained that the spreadsheet was created based on the product characteristics from the first questionnaire issued by the Department under the Agreement. Subsequently, the Department modified the questionnaire to correct an error in thickness range. This change affected thin plate. At the time, the companies failed to make the corresponding change to their spreadsheet. This was not an issue until sales of the thinner CTL plate produced by Ilyich were made. During the July 1, 2011, through December 31, 2011 NV period, the companies mistakenly sold a small amount of thin plate to the United States for which a NV had not been requested or issued. The product was sold inadvertently due to the incorrect thickness information contained in the companies' spreadsheet. See QR at pages 4-5. During the May 2012 verification of the companies, Department officials confirmed that the product dimensions had been corrected in the spreadsheet. See Public Version of the "Verification Report: Metinvest Holding" Memorandum from Julie Santoboni through Judith Wey Rudman to Case File (June 13, 2012), page 12 (Public VR dated June 13, 2012). The cause of the clerical mistake had been remedied and, over the life of the Agreement the companies have demonstrated that their monitoring mechanisms have been effective in ensuring that the companies' products are being sold in the U.S. market at or above their respective NVs. Accordingly, we conclude that the companies are in compliance with the Agreement.

In response to the Department's questionnaire, the companies stated that during the POR, they did not sell subject merchandise to customers in Canada or other third countries that was destined for the United States, nor are they aware of any such sales. See QR, page 5. The Department finds no evidence of any discrepancies in information reported by the companies concerning their exports to the United States, either directly or through third countries, that would constitute a violation of the Agreement. Furthermore, the Department examined the companies' reported sales and cost information for two NV cycles covering the first eight months of the POR for purposes of calculating and releasing requested NVs on August 14, 2012 and January 30, 2013. With the exception of the small volume of sales of thin plate for which the companies did not have NVs, the companies were found to have made sales in accordance with the terms of the Agreement during these NV reviews. See August 14, 2012, letter from Judith Wey Rudman to counsel for Metinvest with attachments; see also January 30, 2013, letter from Judith Wey Rudman to counsel for Metinvest with attachments. Further, as mentioned above, the Department verified the companies' reported sales covering the period from July 1, 2011, through December 31, 2011, in May 2012. See Public VR dated June 13, 2012, page 1. Our review of the information

submitted by Metinvest, Avostal, and Ilyich indicates that the companies have adhered to the terms of the Agreement. In addition, the Agreement is functioning as intended.

Recommendation

Based on the record evidence discussed above, we recommend preliminarily determining that Metinvest and its affiliated companies, Ilyich and Avostal, have been in compliance with the Agreement, and that the Agreement is functioning as intended. If this recommendation is accepted, we will publish the preliminary results of review in the Federal Register.

Agree  Disagree

  
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Paul Piquado  
Assistant Secretary for  
Import Administration

7/26/2013  
\_\_\_\_\_  
Date

## **Attachment One**

The products covered by the Agreement 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 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, 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 Agreement is dispositive.