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DEPARTMENT OF COMMERCE

International Trade Administration

[A-821-809]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation; Preliminary Results of Administrative Review of the Suspension Agreement

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Preliminary Results of the Administrative Review of the Suspension Agreement on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation

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 of Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation (“the Agreement”) for the period July 1, 2010 through June 30, 2011, to review the current status of, and compliance with, the Agreement. For the reasons stated in this notice, the Department preliminarily determines that the Government of the Russian Federation is in compliance with the Agreement. However, the Department’s preliminary evaluation of the status of the Agreement indicates that the Agreement is not meeting its statutory requirement to prevent price undercutting of domestic hot-rolled steel prices. The preliminary results are set forth in the section titled “Preliminary Results of Review,” infra. Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to provide: (1) a statement of the issues, and (2) a brief summary of the arguments.

EFFECTIVE DATE: *[Insert date of publication in the Federal Register.]*

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Anne D'Alauro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482-0162 or (202) 482-4830.

SUPPLEMENTAL INFORMATION:

Background

On July 12, 1999, the Department and the Ministry of Trade (“MOT”) of the Russian Federation signed an agreement under section 734(l) of the Tariff Act of 1930, as amended (the Act), suspending the antidumping duty (“AD”) investigation on hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from the Russian Federation. See Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, 64 FR 38642 (July 19, 1999). Upon the request of the petitioners, the investigation was continued and the Department made an affirmative final determination of sales at less than fair value. See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, 64 FR 38626 (July 19, 1999). Likewise, the International Trade Commission (“ITC”) continued its investigation and made an affirmative determination of material injury to an industry in the United States. See Certain Hot-Rolled Steel Products From Brazil and Russia, 64 FR 46951 (August 27, 1999). The MOT was the predecessor to the Ministry of Economic Development (“MED”) of the Russian Federation, which is now the relevant agency representing the Government of the Russian Federation for purposes of this Agreement.

On August 1, 2011, Nucor submitted a request for an administrative review pursuant to Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 76 FR 38609 (July 1, 2011). On August 26, 2011, the Department initiated an administrative review of the suspension agreement. Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 76 FR 53404 (August, 26, 2011). On September 22, 2011, and January 4, 2012, the Department issued its questionnaire and supplemental questionnaire, respectively, to the Government of the Russian Federation and to the Russian producers/exporters. Responses from Russian producers, OJSC “OMK-Steel” (“OMK”), Mechel OAO, and Novolipetsk Steel (“NLMK”), received on November 21, 2011, reported that their companies had no sales to the United States during the period of review (“POR”). The Government of the Russian Federation and those companies with U.S. sales during the POR, namely Joint Stock Company Severstal (“Severstal”) and JSC “Magnitogorsk & Iron Steel Works” (“MMK”), submitted responses on November 21, 2011, and January 26, 2012, respectively.

Domestic interested parties, Nucor, ArcelorMittal USA LLC, United States Steel Corporation, Gallatin Steel Company, Steel Dynamics, Inc., and SSAB N.A.D., Inc., submitted comments on October 3, 2011 and February 17, 2012, while Nucor submitted additional comments on October 11, 2011, October 19, 2011, January 17, 2012, February 10, 2012, February 21, 2012, and May 11, 2011. On December 20, 2011, Nucor submitted a response to a questionnaire issued to the company by the Department on November 28, 2011. In their comments, domestic interested parties alleged that offers, and subsequent sales, of Russian hot-rolled steel in the United States are suppressing and undercutting domestic hot-rolled steel prices and, as a result, the Agreement is not fulfilling its statutory requirements.

Russian producers Severstal, NLMK, and MMK submitted comments on October 6, 2011 and, with the additional producer OMK, on February 17, 2012, on the issues raised by domestic interested parties in their above-noted submissions.

On January 31, 2012, the Department requested consultations with MED, under section VIII.C of the Agreement, to discuss the issues of the alleged sales of Russian hot-rolled steel imports at prices that call into question the effectiveness of the Agreement's reference price mechanism and whether or not the Agreement is fulfilling its statutory mandate to prevent the undercutting and suppression of domestic hot-rolled steel prices. On February 23, 2012, the Department and the MED held consultations in Washington, D.C. to discuss these issues.

On April 2, 2012, the Department postponed the preliminary results of this review until May 24, 2012. See Notice of Extension of Time Limit for the Preliminary Results of Administrative Review of the Suspension Agreement on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation, 77 FR 19619 (April 2, 2012).

Scope of Review

For the purposes of this Suspension Agreement, "hot-rolled steel" means certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness.

Universal mill plate (*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 a thickness not less than 4.0 mm is not

included within the scope of this agreement.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”)) steels, high strength low alloy (“HSLA”) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this agreement, regardless of *Harmonized Tariff Schedule of the United States* (“HTSUS”) definitions, are products in which: 1) iron predominates, by weight, over each of the other contained elements; 2) the carbon content is 2 percent or less, by weight; and 3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.012 percent of boron, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this agreement unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this agreement:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.

- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10 - 0.14%	0.90% Max	0.025% Max	0.005% Max	0.30 - 0.50%	0.50 - 0.70%	0.20 - 0.40%	0.20% Max

- Width = 44.80 inches maximum; Thickness = 0.063 - 0.198 inches;
- Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000 - 88,000 psi.
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10 - 0.16%	0.70 - 0.90%	0.025% Max	0.006% Max	0.30 - 0.50%	0.50 - 0.70%	0.25% Max	0.20% Max
Mo							
0.21% Max							

- Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
- Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10 - 0.14%	1.30 - 1.80%	0.025% Max	0.005% Max	0.30 - 0.50%	0.50 - 0.70%	0.20 - 0.40%	0.20% Max
V(wt.)	Cb						
0.10 Max	0.08% Max						

- Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;

Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.
 Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.15% Max	1.40% Max	0.025% Max	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max
Nb	Ca	Al					
0.005% Min	Treated	0.01 - 0.07%					

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.

Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

Grade ASTM A570-50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inches nominal), mill edge and skin passed, with a minimum copper content of 0.20 percent.

The covered merchandise is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90,

7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered include: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.01.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the covered merchandise is dispositive.

Period of Review

The POR is July 1, 2010 through June 30, 2011.

Preliminary Results of Review

Section 751(a)(1)(C) of the Act specifies that, in an administrative review of a suspension agreement, 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 and the MOT (the predecessor to the MED) of the Russian Federation signed the Agreement, which suspended the underlying AD investigation on July 12, 1999. Because the Department determined that the Russian Federation was a non-market economy at that time, the Agreement was entered into under section 734(l) of the Act, which applies to non-market-economy

countries.¹ This section provides that the Department may suspend an investigation upon acceptance of an agreement with a non-market-economy country to restrict the volume of imports into the United States, if the Department determines that the agreement: is in the public interest, effective monitoring is possible, and the agreement “will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.” Section 734(I)(1). For this purpose, the Agreement’s terms established annual quota limits and a reference price mechanism to provide minimum prices for sales of Russian hot-rolled steel imports into the U.S. market. The reference price mechanism relies on quarterly adjustments, based on the average unit prices (“AUVs”) of fairly-traded imports as reported by the U.S. Bureau of the Census, as specified under section III.E of the Agreement.

As discussed above, pursuant to section 734(I)(1) of the Act, the Department must ensure that the Agreement “will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.” Neither the Act nor the Department’s regulations contain a definition of price suppression or undercutting. Moreover, the legislative history does not contain any discussion of the terms price suppression or undercutting. Accordingly, the Department has typically considered Section 771(7)(C) of the Act, which requires the ITC, in its price analysis when determining whether there is material injury to an industry in the United States, to consider “whether--(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise

¹ In a memorandum dated 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 under section 771(18)(B) of the Act, with such revocation effective as of April 1, 2002.

depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.”

In this administrative review, domestic interested parties have alleged in part that offers, and subsequent sales, of Russian hot-rolled steel in the United States are undercutting domestic hot-rolled steel prices and, as a result, the Agreement is not fulfilling its statutory requirements. In their February 17, 2012 submission, domestic interested parties argue that, due to a combination of pricing and cost changes in the hot-rolled steel industry, most dramatically in the rising price of raw material inputs since 2004, the adjustments made quarterly within the reference price mechanism have failed to keep pace with changes in U.S. prices. The evidence on the record indicates that, once the reference prices became too low relative to U.S. market prices, the subsequent quarterly adjustments were no longer effective in providing new reference prices that were reflective of U.S. market prices for hot-rolled steel. To demonstrate this point, the current reference price of \$408.32/metric ton for A36 hot-rolled steel applicable to the second quarter of 2012 is now below the price for #1 busheling scrap, a type of scrap commonly used to make hot-rolled sheet, of \$452/metric ton, as reported in the industry publication *SteelBenchmarker* for March 26, 2012. Further, on the same date, *SteelBenchmarker* reported the U.S. price of hot-rolled band as \$763/metric ton -- 187 percent higher than the reference price issued for the relevant quarter. While these particular data pertain to a period that occurred after the period of this review, they demonstrate the continuing limitations of the reference price mechanism, as adjusted on a quarterly basis under the Agreement, and, thus, the continuing failure of that mechanism to prevent undercutting of U.S. market prices.

In their above-cited submissions on the record of this administrative review, domestic interested parties have provided evidence to demonstrate that the reference prices issued under the

Agreement have been consistently below the domestic market prices for hot-rolled steel, as well as below the average prices of hot-rolled steel imports from other countries before and during the POR. See, e.g., the February 10, 2012, submission from Nucor and the February 17, 2012, submission from all domestic interested parties. Further, in examining possible price undercutting by Russian hot-rolled steel imports, the Department looked at the relationship between Russian hot-rolled steel AUVs and U.S. prices during the POR. Using public information, we found that Russian import prices were below U.S. prices in nine out of the 11 months in which imports occurred. See Memorandum to the File, from Anne D’Alauro on “Data Supporting Preliminary Results of Administrative Review” (May 23, 2012). Furthermore, for three of these months during the POR, February, March, and April 2011, Russian AUVs were significantly below--over \$300/metric ton less than-- the U.S. prices of hot-rolled steel for those months. Id. Guided by Section 771(7)(C) of the Act, which instructs the ITC to consider “whether--(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States,”² the Department preliminarily determines that there is price undercutting by Russian hot-rolled steel imports of U.S. hot-rolled steel during the POR.

With respect to compliance with the specific terms of the Agreement, such as the quota limits and the reference prices, no party has placed evidence on the record of this review suggesting that the Russian exporters sold hot-rolled steel products in the U.S. market below the applicable reference prices or in excess of the quota, or that any violations of the Agreement occurred, during the POR.

² We note that, although we are guided by this provision of the Act, which refers to “significant price underselling,” the relevant standard for the Department in evaluating the status of an Agreement refers only to undercutting, not significant undercutting. See section 734(l)(1) of the Act.

In evaluating the information on the record of this administrative review with respect to the current status of, and compliance with, the Agreement, the Department preliminarily determines that the Agreement's reference price mechanism, in its current form, is no longer preventing price undercutting by Russian imports of hot-rolled steel into the U.S. market, and, as a result, the Agreement is no longer fulfilling its statutory requirement. The record evidence indicates that the adjustments made quarterly within the Agreement's current reference price mechanism have failed to keep pace with changes in U.S. prices. Further, once the reference prices became too low relative to U.S. market prices, the subsequent quarterly adjustments were no longer effective in providing new reference prices that were reflective of U.S. market prices for hot-rolled steel. In addition, the record evidence and the Department's analysis indicate that the failing reference price mechanism, as described, has led to the undercutting of domestic hot-rolled steel price levels by Russian hot-rolled steel imports during the POR. Because the Department has preliminarily found price undercutting, the Department has not reached the question of whether the Agreement is preventing the suppression of domestic price levels by Russian hot-rolled steel imports. However, we will further consider the issue during the course of the administrative review, as necessary. Finally, the Department preliminarily finds no evidence, in the information submitted by interested parties in this administrative review, that the Agreement has not been complied with during the POR.

As noted above, on February 23, 2012, the Department and MED entered into consultations to discuss the issues of the alleged sales of Russian hot-rolled steel imports at prices that call into question the effectiveness of the Agreement's reference price mechanism and whether the Agreement is fulfilling its statutory mandate to prevent the undercutting and suppression of domestic hot-rolled steel prices. The Department intends to move forward with

additional consultations with MED during this administrative review, as mutually agreed, in an attempt to resolve these concerns and to bring the Agreement back into alignment with its statutory requirement to prevent the undercutting of domestic price levels for hot-rolled steel.

If, for purposes of the final results of this review, the Department makes no changes to these preliminary results, and no amendment to the Agreement is agreed upon, the Department expects to terminate this Agreement in accordance with section 734(i) of the Act. In addition, if the Department terminates this Agreement pursuant to 734(i), the Department will also direct U.S. Customs and Border Protection to suspend liquidation of all entries of hot-rolled steel from Russia that are entered, or withdrawn from warehouse, for consumption on the date which is 90 days before the date of publication of the notice of termination of the Agreement. See 19 CFR sections 351.213(i) and 351.209(c). Section X(C) of the Agreement specifies that the Department may terminate the Agreement at any time upon written notice to the other party. Pursuant to section X(C) of the Agreement, the Department is hereby providing written notice to the MED of the termination of the Agreement. If the Department makes an affirmative final determination that the Agreement is not satisfying the requirements of the statute, and no amendment to address the issue is agreed upon, the Department will terminate the Agreement on the date of the final results.

Public Comment

An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 C.F.R. 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. See 19 C.F.R. 351.309(c).

Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. See 19 C.F.R. 351.309(d). Parties who submit comments in these proceedings are requested to provide: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, parties submitting case briefs and/or rebuttal briefs are requested to provide the Department with an additional copy of the public version of any such briefs on diskette. The Department will issue the final results of this administrative review, including the results of our analysis of the issues raised in any written comments or at a hearing, if requested, within 120 days of publication of these preliminary results. Given the U.S. market trends and the concerns with respect to the Suspension Agreement's legal viability that the Department is considering in the context of this administrative review, the Department will also evaluate whether there is good cause to accelerate the issuance of the final results (i.e., prior to the 120th day after publication of the preliminary results).

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Ronald K. Lorentzen
Deputy Assistant Secretary for
Import Administration

May 23, 2012_
Date

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