

**BEFORE THE
U.S. INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

***CUT-TO-LENGTH CARBON STEEL PLATE FROM
CHINA, RUSSIA, AND UKRAINE,
INV. NOS. 731-TA-753, 754, AND 756 (THIRD REVIEW)***

**TESTIMONY OF WESLEY V. CARRINGTON
HOGAN LOVELLS US LLP
SEPTEMBER 29, 2015**

Chairman Broadbent, Vice Chairman Pinkert, Commissioners, and Staff:

Good afternoon. My name is Wes Carrington, and I am with Hogan Lovells on behalf of Metinvest. I would like to discuss why the Commission should decumulate Ukraine from Russia and China and consider Ukrainian imports separately.

As we have outlined in Metinvest's prehearing brief, the evidence in this third review compels a decumulated analysis for Ukraine. Cumulating Ukraine with imports from China and Russia – neither of whose producers are even participating in this review – would be inappropriate and contrary to the spirit and intent of the statutory cumulation provision.

There are two principal reasons for this:

- One, imports from Ukraine alone are likely to have no discernible adverse impact on the domestic industry in the event of revocation.

- Two, imports from Ukraine compete under significantly different conditions of competition than those from Russia or China.

I will first address why imports from Ukraine are likely to have no discernible adverse impact.

As you have heard from the company witnesses for Metinvest this afternoon, any import volumes upon revocation are likely to be moderate at most. These projections are, if anything, optimistically high. They depend on a number of factors favorable to Metinvest that may or may not occur, including stabilization of conditions in Ukraine.

There also would be no likely adverse price effects that could cause a discernible adverse impact if the antidumping measures are terminated. The pricing data collected by the Commission shows more instances of overselling than underselling during the period of review for Ukrainian imports. Any attempt by petitioners to use pricing data from 1994 to 1996 as somehow dispositive of what would occur today is inappropriate. As Metinvest has made clear in testimony today, the plate industry in Ukraine is completely different today than in the mid-90s due to privatization, new management, and a shift to a modern, profit-oriented industry.

All of the volume and price factors I have just described mean that any Ukrainian imports upon termination of the suspension agreement would have no discernible adverse impact on the U.S. industry.

However, even if the Commission finds that subject imports from Ukraine are not likely to have no discernible adverse impact, the Commission should exercise its discretion not to cumulate imports from Ukraine with those from Russia and China. There are a number of different ways in which imports from Ukraine compete under significantly different conditions of competition than the other subject countries.

One fundamental difference in competition that would by itself warrant decumulation is the ongoing war in Ukraine, which has severely affected the Ukrainian economy and Metinvest in particular. As you have heard, the plate mills in Ukraine have been affected by shelling, and their supply chains disrupted by armed attacks and fighting. Bridges and railcars used by these mills have been destroyed. One plate mill is no longer even within Ukrainian government-controlled territory. Tragically, Metinvest steel workers have even been killed. Ukraine thus faces unique, extremely difficult market conditions. They are substantially different from the conditions of competition facing producers of plate in Russia or China.

A second important condition of competition warranting decumulation is the change in the Ukrainian industry since the original investigation. Since the Commission's original investigation period over 20 years ago, the three Metinvest mills have undergone privatization, changes in management, and a fundamental shift to a modern, western-oriented industry focused on efficiency and profits.

A third factor supporting decumulation is the small size of Ukraine's plate industry compared with the Chinese industry. Although the exact data are confidential, several individual firms in China each have greater plate capacity than all of Ukraine. This massive difference between the two industries impacts their respective abilities to ship injurious quantities of plate to the United States.

Finally, and very importantly, the Commission should exercise its discretion to decumulate Ukrainian imports because Ukraine is the only country actively participating in this sunset review, as well as the only country whose producers have filed any questionnaires providing coverage of the industry. The Commission has no questionnaire data regarding the subject industries in Russia or China, since zero Russian or Chinese producers filed questionnaire responses with the Commission. By contrast, the Commission has substantial questionnaire data for the Ukraine industry, spanning three mills and covering what the Commission calls "virtually all CTL plate production in Ukraine". Moreover, importers filed questionnaire responses covering what the Commission called "virtually all of U.S.

imports of CTL plate from Ukraine,” which is in contrast to questionnaire coverage for imports covering only half of Russian plate imports and no importers covering Chinese imports.

The Commission’s lack of questionnaire data from the producers in China and Russia means the Commission must resort to secondary, unverifiable trade publications for basic information regarding the industries in these countries. Petitioners themselves argue that the lack of questionnaire data from Russian and Chinese producers warrants application of adverse inferences for those industries.

By contrast, Metinvest is here before the Commission today, and is willing to provide detailed data and other information pertaining to the Ukrainian industry and its operations. This puts the Commission in a much different place, from an industry knowledge and data perspective, when trying to assess the likely effect of termination of the Ukrainian suspension agreement versus the agreement covering Russia or the order covering China.

Metinvest’s full participation in this sunset review is another step in its journey of cooperation with the Commission and the Department of Commerce under the suspension agreement. In fact, in 2013 Commerce concluded that Metinvest was in full compliance with the terms of the suspension agreement and that the agreement was functioning as intended. This is in sharp contrast to the Russian suspension agreement. The U.S. producers recently filed a request that

Russia's suspension agreement be terminated for no longer being in the public interest and since it may have been violated. Just last week, Commerce requested comments on Russia's compliance under its suspension agreement. This is yet another reason to consider Ukrainian imports separately from Russian imports.

In conclusion, we strongly urge the Commission not to cumulate subject imports from Ukraine with those from China or Russia. Thank you.