

MAYER • BROWN

September 14, 2012

Honorable Lisa R. Barton
Acting Secretary
U.S. International Trade Commission
Room 112
500 E Street, SW
Washington, DC 20436

Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006-1101

Main Tel +1 202 263 3000
Main Fax +1 202 263 3300
www.mayerbrown.com

Sydney H. Mintzer
Direct Tel +1 202 263 3866
Direct Fax +1 202 762 4272
smintzer@mayerbrown.com

CONFIDENTIAL VERSION

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Re: *Steel Concrete Reinforcing Bar from Belarus, China, Indonesia, Latvia, Moldova,
Poland and Ukraine*

Dear Madam Secretary:

On behalf of JSC Moldova Steel Works (“MSW”), and pursuant to 19 C.F.R.
§ 207.62(b)(1), we hereby submit comments concerning the adequacy of responses to the Notice
of Institution by the U.S. International Trade Commission (the “Commission”) of the second five-
year review of the antidumping order on Steel Concrete Reinforcing Bar from Belarus, China,
Indonesia, Latvia, Moldova, Poland and Ukraine. 77 Fed. Reg. 39,254 (July 2, 2012).

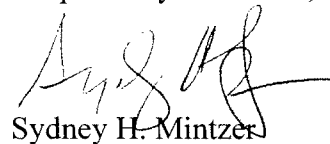
Certain information contained in this response constitutes “confidential business
information” within the meaning of 19 C.F.R. § 201.6(a). Such information consists of

Honorable Lisa R. Barton
Acting Secretary
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production data and other proprietary information belonging to MSW, disclosure of which would cause substantial harm to MSW's competitive position. Accordingly, pursuant to 19 C.F.R. § 201.6, we request that such information be accorded confidential treatment and be disclosed only pursuant to an administrative protective order.

Should there be any questions concerning this response, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Sydney H. Mintzer', is written over the printed name.

Sydney H. Mintzer
Jing Zhang

Counsel for JSW Moldova Steel Works

PROPRIETARY CERTIFICATE OF SERVICE

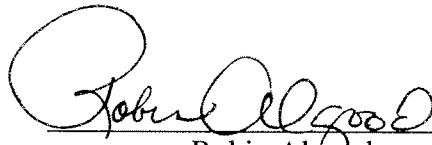
***Steel Concrete Reinforcing Bar from Belarus, China, Indonesia, Latvia,
Moldova, Poland and Ukraine,***

Inv. Nos. 731-TA-873-875, 878-880 and 882 (Second Review)

I, Robin Algood, hereby certify that a copy of the attached confidential version was served upon the following parties in via hand delivery on this 14th day of September 2012:

Alan Price
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006

Donald B. Cameron
MORRIS, MANNING & MARTIN, LLP
1333 H Street, NW
Suite 820
Washington, DC 20005



Robin Algood

Of Counsel:
MAYER BROWN LLP
1999 K Street, NW
Washington, DC 20006-1101
Sydney H. Mintzer
Jing Zhang

I. RESPONSES TO THE NOTICE OF INSTITUTION WITH RESPECT TO THE ORDER ON MOLDOVA ARE ADEQUATE

A. In Assessing the Adequacy of Interested Party Responses, the Commission Examines the Respondent Interested Party Responses With Respect to Each Order

Section 207.62 of the Commission's Rules of Practice and Procedure provides, in relevant part: "The Commission will assess the adequacy of aggregate interested party responses to the notice of institution *with respect to each order . . .*" 19 C.F.R. § 207.62(a) (emphasis added).

In the public notice adopting Section 207.62,¹ it was further explained the Commission first reviews each individual interested party response to the notice of institution for completeness. The Commission then evaluates on an aggregate basis the adequacy of complete responses from two distinct groups: the domestic interested parties and the respondent interested parties. Finally, the Commission will decide the questions of adequacy and whether to conduct an expedited review on an individual order, rather than a group-wide, basis.² In assessing the adequacy of responses from the respondent interested parties, the Commission examines the responding parties' share of subject imports or foreign production or exports to the United States of the subject merchandise for the most recent calendar year.³

B. The Commission Received An Adequate Response from the Moldovan Rebar Industry

On July 2, 2012, the Commission published a notice that it has instituted reviews

¹ *Rules of Practice and Procedure*, 63 Fed. Reg. 30,599 (June 5, 1998) (final rulemaking) ("Final Rulemaking").

² *Id.* at 30,603–30,605.

³ *Id.* at 30,603.

pursuant to Section 751(c) of the Tariff Act of 1930, as amended (“the Act”),⁴ to determine whether revocation of the antidumping duty orders on steel concrete reinforcing bar (“rebar”) from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine would be likely to lead to continuation or recurrence of material injury.⁵

On August 1, 2012, JSC Moldova Steel Works (“MSW”) responded to the Notice of Institution, providing the information requested in the Notice.⁶ In the August 1 Response, MSW informed the Commission, it “represents 100 percent of *subject merchandise* production in Moldova.”⁷ The domestic interested parties, Rebar Trade Action Coalition and its individual members (collectively “RTAC”), agree that MSW is the “single producer of subject merchandise” in Moldova.⁸ The Commission acknowledged the receipt of MSW’s August 1 Response and requested supplementary information in a letter dated August 9, 2012.⁹ Per the Commission’s requirements, MSW filed a supplemental response on August 28, 2012.¹⁰

As such, the Commission has received a timely and complete response to the Notice of Institution that accounts for a 100% share of Moldovan production of the subject merchandise for the most recent calendar year (i.e., 2011).¹¹ Consistent with its Rules of Practice and

⁴ 19 U.S.C. § 1675(c).

⁵ *Steel Concrete Reinforcing Bar from Belarus, China, Indonesia, Latvia, Moldova, Poland and Ukraine*, 77 Fed. Reg. 39,254 (July 2, 2012) (notice of institution) (“Notice of Institution”).

⁶ Letter from Sydney H. Mintzer, Mayer Brown LLP to Acting Secretary, Lisa R. Barton, regarding MSW’s response to the Notice of Institution (Aug. 1, 2012) (“August 1 Response”). Also, on July 31, 2012, Rebar Trade Action Coalition and its individual members (collectively, “RTAC”) filed a response to the Notice of Institution. Letter from Alan Price, Wiley Rein LLP to Acting Secretary, Lisa R. Barton, regarding Substantive Response to Notice of Institution of Five-Year Reviews (July 31, 2012) (“July 31 Response”).

⁷ August 1 Response at 6.

⁸ July 31 Response at 29.

⁹ Letter from Catherine DeFilippo, Director, Office of Investigations to Sydney H. Mintzer, Mayer Brown, LLP (Aug. 9, 2012).

¹⁰ Letter from Sydney H. Mintzer, Mayer Brown, LLP to Acting Secretary, Lisa R. Barton, regarding MSW’s response to questions by the Commission (Aug. 28, 2012) (“August 28 Response”).

¹¹ *Final Rulemaking* at 30,603 (In assessing the adequacy of responses from the respondent interested parties, the Commission examines the responding parties’ share of foreign production of the subject merchandise for the most recent calendar year as a factor). RTAC did not dispute that rebar from subject countries is not being imported

Procedure, the Commission should conduct a full review with respect to the antidumping order on rebar from Moldova, regardless the adequacy of responses from producers/exports from other subject countries.

II. RTAC ASSERTED SEVERAL FACTUAL ERRORS IN ITS RESPONSE TO THE NOTICE OF INSTITUTION

In its response to the Notice of Institution, RTAC submitted inaccurate factual information and made unwarranted assumptions that must be corrected through a full sunset review of the antidumping order on Moldovan rebar.

A. RTAC Failed to Properly Calculate Moldovan Rebar Capacity

At Exhibit 5 of its July 31 Response, RTAC [attached a table entitled “Moldovan Rebar Rolling Capacity (Totals),” claiming MSW’s rolling capacities as 500,000 tons¹² in 2006 and 2007, 1,625,000 tons in 2008, and 3,500,000 tons in 2009 through 2011, allegedly based on data collected from CRU, Steel Long Products Quarterly Industry and Market Outlook (March 2012)].¹³ RTAC did not submit the actual [CRU report], which it claims is the source for its Moldovan rebar capacity data. In any event, these purported Moldovan production capacity figures are simply wrong. Per the Commission’s request, MSW reported the company’s average capacity to manufacture subject rebar during the period of review (“POR”), which is [529,109] short tons per year. It is undisputed that MSW is the sole producer of subject merchandise in Moldova and accurate data have been provided to the Commission. The Commission should, in a full sunset review on the Moldovan order, disregard the erroneous figures reported by RTAC, in favor of the actual Moldovan rebar capacity reported by MSW.

into the United States at a meaningful level and Moldova has ceased selling subject rebar to the US market completely. July 31 Response at 19-20. Therefore, the responding parties’ share of subject imports or foreign exports into the United States of the subject merchandise cannot be used to measure the level of the respondent interested parties’ responses in this case.

¹² RTAC did not specify whether the unit of measure is short tons or metric tons.

¹³ July 31 Response at Ex. 5.

B. RTAC Erred in Assuming That Moldova Had the Ability to Increase Exports to the United States Within a Reasonable Time

On the basis of its submitted capacity data, as well as the Moldovan rebar industry's reliance on export markets, RTAC argues that: "MSW can rapidly penetrate the U.S. market should the order be lifted, and {} it will certainly do so to garner additional revenue." July 31 Response at 30. However, RTAC's unsubstantiated claim is wrong.

1. MSW's [low capacity utilization will continue into the foreseeable future due to a lack of available raw material]

MSW's capacity utilization [declined throughout the POR and the trend continued into the interim period]. It [dropped from over 99% in 2007 to 32.26% in 2011]. The Moldovan industry's [low capacity utilization is caused by a lack of adequate raw material supply, not insufficient market demand], and will continue into the foreseeable future.

Since the first sunset reviews, MSW has experienced a fundamental change in its ability to source steel scrap, MSW's primary raw material used to produce the subject merchandise. To achieve full (i.e., 100%) capacity utilization, MSW would require about [1] million MT of scrap a year. When sourcing scrap, MSW tries to fully exploit domestic supply. The maximum amount of scrap available from Moldova is [25,000 MT per month (i.e., up to 300,000 MT per year)]. Thus, any remaining volume sought by MSW must be sourced from foreign sources. Historically, those foreign sources were in Kazakhstan, Ukraine and Russia, all of which have been exporters of steel scrap. However, MSW is [no longer able to source any meaningful volume of scrap from any of these countries at competitive prices], due to distortive government policies and railway tariffs:

Ukraine. Ukraine maintains an export duty on steel scrap in the amount of EUR 13.2 per MT. Moreover, since January 2012, due to regulatory constraints Ukraine has stopped issuing export licenses for steel scrap. This export duty makes scrap export prices uncompetitive. As a result, Ukrainian scrap is

primarily destined for the Ukrainian market. This trend has been exacerbated by the development of large domestic electrical steel manufacturing facilities (“Dniprostal”). According to the Ukrainian statistics agency (“Ukrpromvneshekspertiza”), in 2012 Ukraine faces a scrap shortage in the amount of 700 to 800 thousand MT. The implementation of a recently announced plan to build electric furnaces at the Donetsk Steel Plant will further increase the deficit of scrap supply in Ukraine to 1.5-2 million MT per year. Therefore, the circumstances in Ukraine are unlikely to change in the foreseeable future.¹⁴

The Russian Federation. Russia currently implements a number of restrictions on exporting steel scrap, which includes reducing the number of customs checkpoints that are allowed to handle the exportation of scrap, as well as maintaining an export duty set at the greater of 15% *ad valorem* or EUR 15 per MT. Both restrictions have been criticized by the EU and US steel industries.¹⁵

The circumstances in Russia are unlikely to change in the foreseeable future. To the contrary, Russia’s Union of Regional Associations of Suppliers and Processors of Ferrous and Non-Ferrous Metal Scrap (“Soyuzlom”), estimates that, by 2020, scrap demand in Russia will increase to 31 million MT, primarily due to the growth in electrical steel production (+40% in 2015 and +83% in 2020 as compared to 2007, respectively). At the same time, scrap production may start to decline (by 15% per year) as early as 2013 due to the reduction of potential reserves. In fact, by 2017 the Russian supply of scrap will drop to 13 million MT (-53% as compared to 2008). Because of the significant growth in demand for scrap, coupled with the anticipated decrease in supply, Russia will soon face a shortage of 3 million MT of scrap in 2013. Thus, the relevant Russian industries will have to either start importing scrap or replace it with cast iron and HBI. By 2019, the deficit of scrap supply could reach 15 million MT (50% of domestic demand).¹⁶

Kazakhstan. Kazakhstan currently has some limited ability to supply steel scrap for export. However, MSW is disadvantaged in terms of access to the Kazakh scrap due to the distance between Kazakhstan and Moldova and high railway tariffs. There is also fierce competition for Kazakh scrap exports from Ukrainian

¹⁴ August 28 Response at 4.

¹⁵ *Id.* at Att. A (Letter from Alan H. Price, President, American Scrap Coalition to Ambassador Ron Kirk, U.S. Trade Representative regarding New Russian Restrictions on Scrap Exports (Feb. 23, 2012).

¹⁶ *Id.*

mills, which themselves face a shortage of scrap supply in their own domestic market.¹⁷

Because of this [significant change in the company's ability to source foreign steel scrap, currently MSW is only able to source scrap on competitive terms from its domestic market in Moldova]. As the amount of scrap [available in Moldova is insufficient to sustain full capacity at MSW, and imported scrap and its substitutes are relatively expensive for the reasons described above, MSW's significantly reduced production is unlikely to change in the foreseeable future].¹⁸ RTAC erred in assuming that [MSW would be able to secure an unlimited amount of steel scrap] to increase substantially its exports to the United States in the event of revocation.

2. MSW's primary export markets are CIS countries

The Commonwealth of Independent States ("CIS") countries are and will continue to be the primary export markets for MSW's rebar. In 2011, MSW sold [153,458] MT of subject rebar. Among these sales, exports totaling [131,265.71] MT were destined for CIS markets. The CIS-market exports, together with [22,192.29] MT of domestic sales made in 2011, constitute [100%] of MSW's commercial shipments in that year, as well as [substantially all] of MSW's 2011 production of the subject merchandise.¹⁹ Similarly, exports to CIS countries and home market sales account for [94.12%] of MSW's commercial shipments in 2010, and [99.74%] during the period January to July 2012.²⁰ The fact that MSW has not been selling subject rebar to the neighboring markets in the European Union ("EU"), or to other foreign markets that place no restrictions on Moldovan rebar (e.g., Canada), [is due to a lack of adequate raw material supply] and unique advantages that the CIS markets offer to Moldovan rebar.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ August 28 Response at Att. B.

²⁰ *Id.*

C. RTAC Erred in Assuming That All Subject Imports Would Be Cumulated

Section 752(a) of the Act provides, in relevant part: “The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that *such imports are likely to have no discernible adverse impact on the domestic industry.*”²¹ Moreover, the Commission will not cumulate subject imports where significant differences in the conditions of competition exist between the subject imports.²² RTAC assumed in its July 31 Response that the Commission would cumulate rebar imports from all subject countries in this sunset review.²³ However, this assumption is erroneous with respect to Moldova.

1. **Revoking the Moldovan AD order would have no discernible adverse impact on the US rebar industry**

The Commission has concluded in prior sunset reviews that a respondent industry’s limited capacity to manufacture the subject merchandise suggests that revocation would be likely to have no discernible adverse impact on the domestic industry.²⁴ This is particularly so when this limited capacity is absorbed by the respondent and third-country markets. For example, in *Certain Pipe and Tube*,²⁵ the Commission found that subject imports from Venezuela would be likely to have no discernible adverse impact on the domestic industry in the event of revocation.

²¹ 19 U.S.C. § 1675a(a)(7) (emphasis added).

²² *Magnesium from China and Russia*, USITC Pub. No. 4214 at 14, Inv. Nos. 731-TA-1071-1072 (Review) (Feb. 2011) (“similarities and differences in the likely conditions of competition”) (“Magnesium from China and Russia”).

²³ See generally July 31 Response at 19-42 (discussing all subject imports on an aggregate basis).

²⁴ *Certain Pipe and Tube From Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela*, USITC Pub. No. 3316, Inv. Nos. 701-TA-253 (Review) and 731-TA-132, 252, 271, 273, 276, 277, 296, 409, 410, 532–534, 536, and 537 (Review) (July 2000) (“*Certain Pipe and Tube*”); see also, *Solid Urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan*, USITC Pub. No. 3248, Inv. Nos. 731-TA-339 and 340-A-I (Review) (Oct. 1999); *Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan*, USITC Pub. No. 3784, Inv. Nos. 701-TA-376, 377, & 379 and 731-TA-788-793 (Review) (June 2005).

²⁵ *Certain Pipe and Tube* at 32.

It drew this conclusion for multiple reasons. Among other things, the Commission concluded that total Venezuelan capacity to produce the subject merchandise is “relatively modest.”²⁶ Further, the Venezuelan industry had “established third country markets for its exports, principally in neighboring Latin American and Caribbean countries, and benefits from preferential trade agreements in some of these countries.”²⁷

Like the circumstances in *Certain Pipe and Tube*, MSW’s actual capacity to produce rebar is [extremely small] due to persistent [raw material supply shortages]. Further, what MSW actually produces is primarily sold to neighboring CIS markets. Therefore, contrary to the conclusions drawn by RTAC, the Commission may not cumulate Moldovan rebar in this review.

Moreover, Moldovan rebar is insignificant when compared to US production.²⁸ According to RTAC, US rebar production in 2011 totaled [5,577,241] short tons. In that same year, total Moldovan production amounted to only [3.1%] of the US production. Thus, any Moldovan quantity destined for the United States would not likely have a discernible adverse impact on the domestic rebar industry.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Certain Pipe and Tube* at 32 (even though this comparison is usually done with US apparent consumption, due to lack of data on the record regarding U.S. exports, MSW is unable to complete that analysis at this juncture of the proceeding).

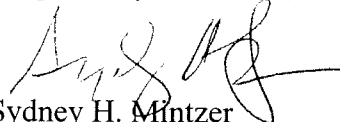
2. Significant differences in the conditions of competition exist between Moldovan rebar and subject imports from other countries

The Commission previously has found that [a raw material shortage] justifies foregoing cumulation.²⁹ For example, in *Magnesium from China and Russia*, the Commission declined to exercise its discretion to cumulate subject imports from China and Russia in part because the Russian industry, unlike the Chinese industry, [“has been hampered by a shortage of carnallite, the raw material that it uses in magnesium production].”³⁰ Like the Russian magnesium industry in that case, MSW faces [a severe raw material supply shortage], which is unlikely to change in the foreseeable future, while the Chinese rebar industry increased its production and capacity and, “[d]espite the significant levels of rebar output in China, capacity expansions continue.” July 31 Response at 26–27. These circumstances differentiate Moldova from other subject countries and warrants the Commission’s consideration of Moldova separately.

IV. CONCLUSION

The Commission received a complete interested party response to the Notice of Institution from the Moldovan rebar industry under review. This response represents a 100% share of Moldovan production of the subject merchandise. Because the Commission determines the adequacy of interested party responses individually for each order, a full sunset review should be conducted with respect to the antidumping order on rebar from Moldova.

Respectfully submitted,


Sydney H. Mintzer
Jing Zhang
MAYER BROWN LLP

Counsel to JSC Moldova Steel Works

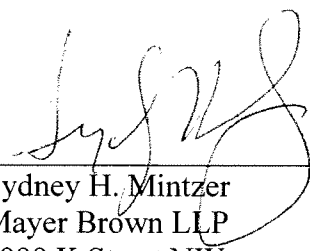
²⁹ *Magnesium from China and Russia* at 19.

³⁰ *Id.*

CERTIFICATION

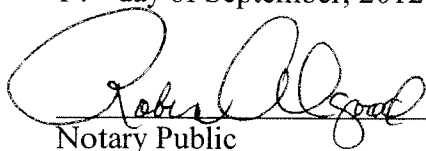
I, Sydney H. Mintzer, of Mayer Brown LLP, counsel to JSC Moldova Steel Works (“MSW”), having been duly sworn on this 14th day of September, 2012, do hereby certify, pursuant to 19 C.F.R. § 201.6(b)(3)(iii), that to the best of my knowledge and belief, information substantially identical to that for which proprietary treatment has been requested in this submission is not available to the general public.

Further, in accordance with 19 C.F.R. § 207.3(a), I hereby certify that (1) I have read the attached submission, and (2) to the best of my knowledge, the information contained in this document is accurate and complete.



Sydney H. Mintzer
Mayer Brown LLP
1999 K Street NW
Washington, DC 20006

Sworn to and subscribed before me this
14th day of September, 2012



Notary Public

My Commission expires: _____

ROBIN L. ALGOOD
Notary Public, District of Columbia
My Commission Expires April 14, 2014