A-570-964
A-201-838
Sunset Review
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Decision Memorandum for the Full Sunset Reviews of the Antidumping Duty Orders on Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico

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Summary

We have analyzed the responses of the interested parties in the sunset reviews of the antidumping duty ("AD") orders on seamless refined copper pipe and tube ("copper pipe and tube") from the People's Republic of China ("PRC") and Mexico.[1] In accordance with our analysis of the parties' substantive responses, we recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. The following is a complete list of issues in these sunset reviews for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping;

2. Magnitude of the dumping margin likely to prevail.

[1] *See* Letter from domestic interested parties to the Secretary of Commerce, "Substantive Response to Notice of Initiation of Sunset Review; Seamless Refined Copper Pipe and Tube from China" (November 2, 2015) ("Domestic Interested Parties' Response – PRC"); Letter from domestic interested parties to the Secretary of Commerce, "Substantive Response to Notice of Initiation of Sunset Review; Seamless Refined Copper Pipe and Tube from Mexico" (November 2, 2015) ("Domestic Interested Parties' Response – Mexico"); Letter from Golden Dragon to the Secretary of Commerce, "Substantive Response to Notice of Initiation of Sunset Review; Seamless Refined Copper Pipe and Tube from China" (November 2, 2015) ("Golden Dragon Response – PRC"); Letter from Golden Dragon to the Secretary of Commerce, "Substantive Response to Notice of Initiation of Sunset Review; Seamless Refined Copper Pipe and Tube from Mexico" (November 2, 2015) ("Golden Dragon Response – Mexico").

Background

On October 1, 2015, the Department of Commerce (the "Department") published the notice of initiation of the sunset reviews of the AD orders on copper pipe and tube from the PRC and Mexico pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[2] In these (first) sunset reviews, the Ad Hoc Coalition for Domestically Produced Seamless Refined Copper Pipe and Tube and its individual members, Cerro Flow Products, LLC, Wieland Copper Products, LLC, Howell Metal Company, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. ("domestic interested parties") submitted adequate and timely notices of intent to participate in the sunset reviews within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).[3] On November 2, 2015, domestic interested parties submitted adequate substantive responses within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4]

On November 2, 2015, Golden Dragon,[5] a respondent interested party, filed a substantive response in these sunset reviews pursuant to 19 CFR 351.218(d)(3).[6] In response to a Department questionnaire, Golden Dragon filed a supplemental response on December 8, 2015.[7]

On January 8, 2016, the Department placed U.S. Customs and Border Protection ("CBP") import volume data on the record as part of its inquiry into the adequacy of the respondent interested party's substantive response.[8] The Department provided all parties an opportunity to comment on the CBP data. On January 12, 2016, domestic interested parties commented on the CBP import volume data.[9] On January 13, 2016, the Department determined that the substantive response submitted by Golden Dragon was adequate, and informed the U.S. International Trade Commission ("ITC") that the Department would conduct full sunset reviews.[10]

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[2] *See Seamless Refined Copper Pipe and Tube From China and Mexico; Institution of Five-Year Reviews*, 80 FR 59186 (October 1, 2015) ("*Initiation FR Notice*").
[3] *See* Letter from domestic interested parties regarding "Seamless Refined Copper Pipe and Tube from China: Notice of Intent to Participate," dated October 16, 2015; Letter from domestic interested parties regarding "Seamless Refined Copper Pipe and Tube from Mexico: Notice of Intent to Participate," dated October 16, 2015.
[4] *See* Domestic Interested Parties' Response – PRC; Domestic Interested Parties' Response – Mexico.
[5] In case number A-570-964 (the PRC), the substantive response in this sunset review was filed on behalf of Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., GD Copper Cooperatief UA, Golden Dragon Holding (Hong Kong) International, Ltd. and GD Copper (U.S.A.), Inc. In case number A-201-838 (Mexico), the substantive response was filed on behalf of GD Affiliates S. de R.L. de C.V., GD Copper S. de R.L. de C.V., Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., GD Copper Cooperatief UA, Golden Dragon Holding (Hong Kong) International, Ltd. and GD Copper (U.S.A.), Inc. The Department refers to all of these companies collectively as "Golden Dragon".
[6] *See* Golden Dragon Response – PRC; Golden Dragon Response – Mexico.
[7] *See* Letter from Golden Dragon to the Secretary of Commerce, "Response to Supplemental Questionnaire; Seamless Refined Copper Pipe and Tube from China" (December 8, 2015); Letter from Golden Dragon to the Secretary of Commerce, "Response to Supplemental Questionnaire; Seamless Refined Copper Pipe and Tube from Mexico" (December 8, 2015).
[8] *See* Memo to File from Robert Bolling, "Sunset Reviews of the Antidumping Duty Orders on Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico – CBP Data," dated January 8, 2016.
[9] *See* Letter from domestic interested parties concerning customs data, dated January 12, 2016.
[10] *See* Memo to File from Robert Bolling, "Sunset Reviews of the Antidumping Duty Orders on Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico – Adequacy of Respondent Party's Substantive Response," dated January 23, 2016.

History of the Orders

PRC – Investigation/Administrative Reviews

The Department published its final determination of sales at less than fair value ("LTFV") on October 1, 2010.[11] On November 22, 2010, the Department published an AD order, as amended, on imports of copper pipe and tube from the PRC,[12] and assigned the following weighted-average dumping margins:

Golden Dragon Precise Copper Tube Group, Inc	11.25 percent
Zhejiang Hailiang Co., Ltd.; Hong Kong Hailiang Metal Trading Limited; Shanghai Hailiang Copper Co., Ltd	60.85 percent
Zhejiang Naile Copper Co., Ltd	36.05 percent
Zhejiang Jiahe Pipes Inc	36.05 percent
Luvata Tube (Zhongshan) Ltd	36.05 percent
Luvata Alltop (Zhongshan) Ltd	36.05 percent
Ningbo Jintian Copper Tube Co. Ltd	36.05 percent
PRC-Wide Entity	60.85 percent

There have been four administrative review segments relating to the *Order* on copper pipe and tube from the PRC. The Department published the results from the first administrative review (2010-2011) on June 12, 2013.[13] In the final results of its review, the Department assigned the following dumping margins:

Golden Dragon Precise Copper Tube Group, Inc.	0.00 percent
Hong Kong Hailiang Metal Trading Limited, Zhejiang Hailiang Co., Ltd., and Shanghai Hailiang Copper Co., Ltd	60.85 percent

The Department published the final results of the second administrative review (2011-2012) on April 28, 2014.[14] The results were subsequently amended.[15] In the amended results, the Department assigned the following antidumping duty margins:

Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., and Golden Dragon Holding (Hong Kong) International, Ltd.	4.48 percent

[11] *See Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010).

[12] *See Seamless Refined Copper Pipe and Tube From Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value From Mexico*, 75 FR 71070 (November 22, 2010) ("*Orders*").

[13] *See Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Results and Partial Revocation of 2010/11 Antidumping Duty Administrative Review*, 78 FR 35251 (June 12, 2013).

[14] *Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 23324 (April 28, 2014) ("*Copper Pipe PRC AR2 Final*").

[15] *See Seamless Refined Copper Pipe and Tube From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 47091 (August 12, 2014) ("*Copper Pipe PRC AR2 Amended Final*").

Hong Kong Hailiang Metal Trading Limited, Zhejiang Hailiang Co., Ltd., and Shanghai Hailiang Copper Co., Ltd	4.50 percent

The Department published the results of the third administrative review (2012-2013) on June 5, 2015.[16] The Department assigned Golden Dragon an antidumping duty margin of 10.50 percent, and the PRC-wide entity continued to be assigned a margin of 60.85.

The Department initiated a fourth administrative review (2013-2014) on December 23, 2014, and published the preliminary results of the review on December 7, 2015.[17] The Department preliminarily determined that Golden Dragon's dumping margin was 5.89.

Mexico – Investigation/Administrative Reviews

On November 22, 2010, the Department published an AD order, as amended, on imports of copper pipe and tube from Mexico.[18] In the Department's final determination of sales at LTFV, the Department calculated the following weighted-average dumping margins:

IUSA S.A. de C.V	24.89 percent
Nacional de Cobre, S.A. de C.V	27.16 percent
All Others	26.03 percent

On September 26, 2012, the Department published the results of a new shipper review. The Department assigned the new shipper, GD Affiliates S. de R.L. de C.V., a margin of 5.53 percent.[19]

There have been three completed administrative reviews relating to the AD order on copper pipe and tube from Mexico. The Department published the final results of the first administrative review (2010-2011) on June 12, 2013.[20] In that review, the Department determined that GD Affiliates S. de R.L. de C.V. and Nacional de Cobre, S.A. de C.V did not sell subject merchandise at prices below normal value.[21]

The Department published the final results of the second administrative review (2011-2012) on June 30, 2014.[22] As a result of the review, the Department calculated the following antidumping duty margins:

[16] *See Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32087 (June 5, 2015).
[17] *See Seamless Refined Copper Pipe and Tube From the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review; 2013-2014,* 80 FR 75968 (December 7, 2015).
[18] *See Orders*.
[19] *See Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty New Shipper Review*, 77 FR 59178 (September 26, 2012).
[20] *Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35244 (June 12, 2013).
[21] *Id.* at 35245.
[22] *See Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36719 (June 30, 2014).

GD Affiliates S. de R.L. de C.V	2.26 percent
Nacional de Cobre, S.A. de C.V	0.58 percent

The Department published the final results of the third administrative review (2012-2013) on June 12, 2015.[23] In the review, the Department assigned the following antidumping duty margins:

GD Affiliates S. de R.L. de C.V	0.00 percent
Nacional de Cobre, S.A. de C.V	0.00 percent

The Department published the final results of the fourth administrative review (2013-2014) on November 4, 2015.[24] The Department determined a weighted-average dumping margin of 0.00 percent for the sole producer/exporter under review, GD Affiliates S. de R.L. de C.V.[25]

PRC & Mexico – Sunset Reviews

On October 1, 2015, the Department initiated its sunset reviews of the *Orders* pursuant to section 751(c) of the Act.[26] Having received adequate substantive responses from domestic and respondent interested parties in accordance with the Department's regulations at 19 CFR 351.218(d), the Department initiated these "full" sunset reviews consistent with 19 CFR 351.218(e)(1)(ii)(A) and 351.218(d)(3)(ii)-(iii). Our analysis of the interested parties' comments is set forth, below.

Scope Inquiries, Changed Circumstances Reviews, and Duty Absorption

The Department has conducted a scope inquiry relevant to these *Orders*. On September 16, 2013, the Department issued a scope ruling in response to a request from Luvata Tube (Zhongshan) Ltd.[27] The Department determined that Luvata's product was not within the scope of the *Orders* because the nickel content of the subject tubes exceeded the limitations established by the definition of refined copper.

The history of the *Orders* does not include any circumvention or changed circumstances determinations.

The Department has made an affirmative finding of duty absorption. In the Department's second administrative review of the *Order* on copper pipe and tube from the PRC, it determined that antidumping duties were absorbed by Golden Dragon on all U.S. sales made through its affiliated

[23] *See Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 33482 (June 12, 2015).
[24] *Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 69944 (November 12, 2015).
[25] *Id.* at 69944.
[26] *See Initiation FR Notice.*
[27] *See* Memorandum from Abdelali Elouaradia to Christian Marsh, "Scope Request on the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from the People's Republic of China: Luvata Tube (Zhongshan) Ltd.," dated September 16, 2013.

importer of record.[28] In the Department's second administrative review of the *Order* on copper pipe and tube from Mexico, the Department similarly determined that antidumping duties were absorbed by GD Affiliates S. de R.L. de C.V and Nacobre on all U.S. sales made through their affiliated importers of record.[29]

Scope of the Orders

For the purpose of these *Orders*, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to six inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter ("OD"), regardless of wall thickness, bore (*e.g.*, smooth, enhanced with inner grooves or ridges), manufacturing process (*e.g.*, hot finished, cold-drawn, annealed), outer surface (*e.g.*, plain or enhanced with grooves, ridges, fins, or gills), end finish (*e.g.*, plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (*e.g.*, plastic, paint), insulation, attachments (*e.g.*, plain, capped, plugged, with compression or other fitting), or physical configuration (*e.g.*, straight, coiled, bent, wound on spools).

The scope of these *Orders* covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials ("ASTM") ASTM-B42, ASTM-B68, ASTM-B75, ASTM-B88, ASTM-B88M, ASTM-B188, ASTM-B251, ASTM-B251M, ASTM-B280, ASTM-B302, ASTM-B306, ASTM-359, ASTM-B743, ASTM-B819, and ASTM-B903 specifications and meeting the physical parameters described therein. Also included within the scope of this order are all sets of covered products, including "line sets" of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase "all sets of covered products" denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

"Refined copper" is defined as: (1) metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

ELEMENT	LIMITING CONTENT PERCENT BY WEIGHT
Ag - Silver	0.25
As - Arsenic	0.5
Cd - Cadmium	1.3
Cr - Chromium	1.4
Mg - Magnesium	0.8
Pb - Lead	1.5
S - Sulfur	0.7

[28] *See Seamless Refined Copper Pipe and Tube From the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review; 2011-2012*, 78 FR 69820 (November 21, 2013), unchanged in *Copper Pipe PRC AR2 Final*, *as amended by Copper Pipe PRC AR2 Amended Final*.
[29] *See Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36719 (June 30, 2014); *see also Seamless Refined Copper Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77651 (December 24, 2013), and accompanying Preliminary Decision Memorandum.

Sn - Tin	0.8
Te - Tellurium	0.8
Zn - Zinc	1.0
Zr - Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of these *Orders* are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to these *Orders* are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Products subject to these *Orders* may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act and 19 CFR 351.218, the Department is conducting these sunset reviews to determine whether revocation of the *Orders* would likely 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 subject merchandise for the period before, and the period after, the issuance of the order.

Consistent with guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, the Statement of Administrative Action,[30] the House Report,[31] and the Senate Report[32]), the Department will make its likelihood determination on an order-wide, rather than company-specific, basis.[33]

The Department normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (a) dumping continued at any level above *de minimis* after issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.[34] Alternatively, the Department normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.[35]

[30] *See* Statement of Administrative Action, H.R. Rep. No. 103-316, Vol. 1 (1994) ("SAA").
[31] H. Rep. No. 103-826, pt. 1 (1994) ("House Report"), reprinted at 1994 U.S.C.C.A.N. 4040.
[32] S. Rep. No. 103-412 (1994) ("Senate Report"), reprinted at 1994 U.S.C.C.A.N. 3773.
[33] *See* SAA at 879, and House Report at 56.
[34] *See* SAA at 889-90, House Report at 63-64, and Senate Report at 52.
[35] *See* SAA at 889-90, and House Report at 63.

Further, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the margin(s) from the final determination in the investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.[36] However, in certain circumstances, a more recently calculated rate may be more appropriate (*e.g.*, "if dumping margins have declined over the life of an order and imports have remained steady or increased, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review").[37] 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 AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.[38]

In the *Final Modification for Reviews*, the Department announced that in five-year (*i.e.*, sunset) reviews, it will not rely on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be World Trade Organization ("WTO")-inconsistent, *i.e.*, zeroing/the denial of offsets for dumped sales.[39] The Department also noted that "*only in the most extraordinary circumstances* will the Department rely on margins other than those calculated and published in prior determinations."[40] 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."[41]

Analysis

Consistent with this framework, we address the following two issues: (1) the likelihood of continuation or recurrence of dumping; and (2) the magnitude of the dumping margin likely to prevail. We address the comments submitted by the interested parties, in turn.

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[36] *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.
[37] *See* SAA at 890-91.
[38] *See Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.
[39] *See Final Modification for Reviews*, 77 FR 8101, 8109 (February 14, 2012).
[40] *Id.* (emphasis added); *see also* 19 CFR 351.218(e)(2).
[41] *See Final Modification for Reviews*, 77 FR at 8109.

1. Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Parties' Comments

PRC

- The prevailing cash deposit rates are comparable to those determined in the LTFV investigation.[42]
- Where the Department found that exporter Golden Dragon Precise Copper Tube Group, Inc. was not dumping, the Department found an antidumping duty margin of 4.48 percent for the company in the subsequent administrative review.[43]
- Imports of subject copper pipe and tube declined dramatically following issuance of the *Order*.[44]

Mexico

- Dumping has persisted since the imposition of the *Order* following the LTFV investigation.[45]
- Where the Department found that an exporter GD Affiliates S. de R.L. de C.V. was not dumping in the first administrative review, the Department found an antidumping duty margin of 2.26 percent in the subsequent administrative review.[46]
- Imports of subject copper pipe and tube declined dramatically following issuance of the *Order*.[47]

Respondent Interested Party's Comments

PRC/Mexico

- No comments were submitted regarding the likelihood of continuation or recurrence of dumping.

Department Position

As explained in the "Legal Framework" section above, the Department's determination concerning whether revocation of an AD order would be likely to lead to continuation or recurrence of dumping is based, in part, upon guidance provided by the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, the SAA; House Report; and Senate Report). Consistent with the SAA and House Report, the Department will make its likelihood determination on an order-wide basis.[48] Further, when determining whether revocation of the

[42] *See* Domestic Interested Parties' Response – PRC at 7-9.
[43] *Id.* at 8.
[44] *Id.* at 9-10.
[45] *See* Domestic Interested Parties' Response – Mexico at 6.
[46] *Id.* at 8.
[47] *Id.* at 8-9.
[48] *See* SAA at 879 and House Report at 56.

order would be likely to lead to a continuation of dumping, sections 752(c)(1)(A) and (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 AD order.

According to the SAA, existence of dumping margins after the order "is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping."[49] In addition, "declining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes."[50]

For the reasons discussed below, we preliminarily find that revocation of the *Orders* would be likely to result in the continuation or recurrence of dumping in the United States.

PRC

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and subsequent reviews. In the *Order*, the Department assigned the individually investigated respondents antidumping duty rates of 11.25 percent and 60.85 percent. The separate rate companies received a rate of 36.05 percent, and the PRC-wide rate was set at 60.85 percent.

Dumping margins largely remained in place during the course of the subsequent administrative reviews. In all of the reviews, the mandatory respondent(s) received rates above *de minimis* levels, with the exception of Golden Dragon Precise Copper Tube Group, Inc. in the first review. As explained in the *Final Modification for Reviews*, "{i}f the dumping margins determined in a manner not found to be WTO-inconsistent in these disputes indicate that dumping continued with the discipline of the order in place, those dumping margins alone can form the basis for a determination that dumping will continue or recur if the order were to be revoked."[51] Accordingly, the persistent margins here support our conclusion that dumping would be likely to continue absent an order.

As noted above, pursuant to the SAA, the Department also assessed whether imports of subject merchandise ceased after issuance of the *Order* to determine whether revocation would be likely to lead to the continuation or recurrence of dumping. The domestic interested parties provided

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[49] *See* SAA at 890.
[50] *Id.* at 889.
[51] *See Final Modification for Reviews*, 77 FR at 8103. The Department ceased its practice of zeroing in LTFV investigations prior to the investigation here. *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006).

annual import data to demonstrate that there was a decline in imports of subject merchandise following the *Order*.[52]

For our comparison of import volumes, we used the annual period immediately preceding the year in which the investigation was initiated as a reference point, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.[53] Accordingly, we compared annual import volumes during 2008 with the import volume for each annual period following issuance of the antidumping order (2011-2014).[54] Through this comparison, we observed a decline in the volume of imports of subject merchandise from 55,841,000 kg in 2008 to 12,976,000 kg in the year immediately following the issuance of the *Order* (2011). In the second year following the *Order*, volumes declined further, to 11,728,000 kg. Over the course of the next two years, import volumes increased slightly to 11,778,000 and 13,071,000, respectively. However, in no year following issuance of the *Order* did exports of subject merchandise come close to approaching pre-*Order* levels.

Based on the foregoing, pursuant to section 752(c)(1) of the Act, and consistent with the guidance in the SAA,[55] we preliminarily find that dumping would be likely to continue or recur if the order were revoked.

Mexico

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and subsequent reviews. In the *Order*, the mandatory respondents received rates of 24.89 percent and 27.16 percent. The "All-Others" rate was 26.03 percent.

Following issuance of the *Order*, the Department continued to find that dumping was occurring. In a new shipper review, concluded in 2012, the Department assigned the respondent a rate of 5.53 percent. In the second administrative review of this *Order*, concluded in 2014, the Department assigned the respondents rates of 2.26 and 0.58 percent. Although respondents also received rates of 0.00 percent in several instances, this does "not by itself require the Department to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at LTFV."[56]

[52] *See* Domestic Interested Parties' Response – PRC at 10.
[53] *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.
[54] *See* Attachment 1. The import data covered the following HTSUS statistical categories: 7411.10.1030, 7411.10.1090, 7407.10.1500, 7419.99.5050, 8415.90.8065 and 8415.90.8085.
[55] *See* SAA, at 890.
[56] *See Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1. Additionally, we note that although the two individually investigated respondents received 0.00 percent rates in the first administrative review, the Department made a finding of duty absorption for both parties in the subsequent administrative review.

As above, the Department also assessed whether imports of the subject merchandise ceased after issuance of the *Order* to determine whether revocation would be likely to lead to continuation or recurrence of dumping. The domestic interested parties provided annual data to demonstrate a decline in imports of subject merchandise.[57]

We compared import volumes during 2008 with the import volume for each annual period following issuance of the antidumping order (2011-2014).[58] We observed a clear decline in the volume of imports of subject merchandise. Imports of copper pipe and tube from Mexico in 2008 totaled 33,139,000 kg, and dropped to 3,349,000 kg in the year immediately following the issuance of the *Order* (*i.e.*, 2011). In the second year following issuance of the *Order*, volumes declined further, to 1,737,000 kg. Over the course of the next two years, import volumes totaled 1,737,000 kg and 3,702,000 kg. In no year following issuance of the *Order* did exports of subject merchandise approach pre-*Order* levels.

As noted above, the Department normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping where, as here, dumping continued at any level above *de minimis* after issuance of the order.[59] Additionally, our review of the trade data further supports our conclusion regarding the likelihood of continuation or recurrence of dumping. Accordingly, pursuant to section 752(c)(1) of the Act, the Department preliminarily determines that dumping would likely continue or recur if the *Order* were revoked.

2. Magnitude of the Dumping Margin Likely to Prevail

Domestic Interested Parties' Comments

PRC

- The Department should provide to the ITC the dumping margins that the Department found in the original investigation, as these margins reflect the rate of dumping without the discipline of an order in place.[60]
- The current margins are nearly identical to the margins determined in the LTFV investigation, indicating that respondents have not altered their pricing behavior.[61]
- The Department should increase the margin reported for Golden Dragon Precise Copper Tube Group, Inc. to account for the duty absorption finding in the second administrative review.[62]

Mexico

- The Department should provide to the ITC the dumping margins that the Department found in the original investigation, as these margins reflect the rate of dumping without the discipline of an order in place.[63]

[57] *See* Domestic Interested Parties' Response – Mexico at 8-9.
[58] *See* Attachment 1.
[59] *See* SAA at 889-90, House Report at 63-64, and Senate Report at 52.
[60] *See* Domestic Interested Parties' Response – PRC at 12.
[61] *Id.* at 13.
[62] *Id.* at 12-13.

- The Department should increase the margin reported for GD Affiliates S. de R.L. de C.V. to account for the duty absorption finding in the second administrative review.[64]

Respondent Interested Party's Comments

PRC/Mexico

- If the Secretary revokes the *Orders*, the dumping margin likely to prevail for Golden Dragon is zero.[65]

Department Position

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC "the magnitude of the margin of dumping that is likely to prevail if the order is revoked or the suspended investigation is terminated." Normally, the Department will provide to the ITC weighted-average dumping margins from the investigation.[66] The Department's preference for selecting a rate from the investigation is based on the fact that these are the only calculated rates that reflect the behavior of manufacturers, producers and exporters without the discipline of an order or suspension agreement in place.[67]

The Department will normally provide a rate based on the "All-Others" rate from the investigation for companies not individually investigated or for companies that did not begin shipping until after the order was issued. For the PRC, which the Department considers to be a non-market economy under section 771(18)(A) of the Act, the Department does not have an "All-Others" rate. Thus, in non-market economy cases, instead of an "All-Others" rate, the Department uses an established country-wide rate, which it applies to all imports from exporters that have not established their eligibility for a separate rate.[68]

As indicated in the "Legal Framework" section above, the Department's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology, consistent with the *Final Modification for Reviews*. Instead, we may rely on other rates that are available, or we may recalculate weighted-average dumping margins using our current offsetting methodology in extraordinary circumstances.[69]

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[63] *See* Domestic Interested Parties' Response – Mexico at 11.
[64] *Id.* at 12-13.
[65] *See* Golden Dragon Response – PRC at 3; Golden Dragon Response – Mexico at 3.
[66] *See Eveready Battery Co. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999).
[67] *See* SAA at 890; *see also, e.g., 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.
[68] *See Bristol Metals L.P. v United States*, 703 F. Supp. 2d 1370, 1378 (CIT 2010) (citation omitted); *see also Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368, 1379 (CIT 2009) (citation omitted).
[69] *See Final Modification for Reviews*, 77 FR at 8103.

PRC

After considering the dumping margins determined in the investigation and the subsequent administrative reviews, we preliminarily find that it is appropriate to provide the ITC with the margins determined in the LTFV investigation because those margins reflect the behavior of manufacturers, producers and exporters without the discipline of an order in place. We further determine that, in accordance with the requirements set forth in the *Final Modification for Reviews*, these margins were not affected by the denial of offsets for non-dumped sales.

As a result, if we adopt these preliminary results in the final results, we will report to the ITC the margin of dumping likely to prevail listed in the "Preliminary Results of Sunset Reviews" section below.

Mexico

After considering the dumping margins determined in the investigation and the subsequent administrative reviews, we preliminarily find that, as an indication of the magnitude of the margins likely to prevail, it is appropriate to provide the ITC with the margins determined in the LTFV investigation because those margins reflect the behavior of manufacturers, producers and exporters without the discipline of an order in place. We further determine that these margins were not affected by the denial of offsets for non-dumped sales.

As a result, if we adopt these preliminary results in the final results, we will report to the ITC the margin of dumping likely to prevail listed in the "Preliminary Results of Reviews" section below.

<u>Preliminary Results of Sunset Reviews</u>

We preliminarily determine that revocation of the *Orders* on copper pipe and tube from the PRC and Mexico would likely lead to continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail would be weighted-average margins up to 60.85 percent for the PRC and up to 27.16 percent for Mexico. Additionally, given the Department's reliance on the margins from the investigation, adjustment of the margins to account for duty absorption is unnecessary.[70]

[70] *See, e.g., Certain Activated Carbon From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 77 FR 33420 (June 6, 2012) and Issues and Decision Memorandum at 8-9.

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the preliminarily results of these sunset reviews in the *Federal Register* and notify the ITC of the Department's determination.

Agree ✓ 　　　　　　　　Disagree________

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Paul Piquado
Assistant Secretary
for Enforcement and Compliance

19 JANUARY 2016
____
Date

Attachment 1

Import Volume Data – Copper Pipe and Tube		
	PRC	**Mexico**
2008	55,841,000	33,139,000
2009	44,394,000	22,286,000
2010	22,372,000	12,249,000
2011	12,976,000	3,349,000
2012	11,729,000	1,737,000
2013	11,778,000	1,737,000
2014	13,071,000	3,702,000

The figures above are based on the following HTSUS categories:

7411.10.1030
7411.10.1090
7407.10.1500
7419.99.5050
8415.90.8065
8415.90.8085

Source:

Int'l Trade Commission https://dataweb.usitc.gov/