



A-823-815
Sunset Review
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September 23, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: Alex Villanueva
Senior Director, Office I
Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Decision Memorandum for the First Sunset Review of
the Antidumping Duty Order on Oil Country Tubular Goods from
Ukraine

I. Summary

We have analyzed the responses of the interested parties in the first sunset review of the antidumping duty (AD) order covering certain oil country tubular goods (OCTG) from Ukraine. We recommend that you approve the positions we developed in the “Discussion of the Issues” section of this preliminary decision memorandum. Below is the complete list of the issues in this sunset review:

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margins Likely to Prevail

II. History of the Order

On July 29, 2013, the Department of Commerce (Commerce) initiated the AD investigation on OCTG from Ukraine.¹ On February 25, 2014, Commerce preliminarily determined that OCTG is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act).² Commerce also published its

¹ See *Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 78 FR 45505 (July 29, 2013).

² See *Certain Oil Country Tubular Goods from Ukraine: Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 10482 (February 25, 2014).



negative *Preliminary Determination* of critical circumstances in the investigation on OCTG from Ukraine.³

On June 10, 2014, Commerce and Interpipe initialed a proposed agreement suspending the investigation on OCTG from Ukraine, and invited interested parties to provide written comments on the terms of the proposed agreement.⁴ In response to this request, Commerce received comments from Interpipe and from the petitioners in that proceeding (*i.e.*, Maverick Tube Corporation; United States Steel Corporation; Boomerang Tube LLC; EnergeX, a division of JMC Steel Group; Northwest Pipe Company; Tejas Tubular Products, Inc.; TMK IPSCO; Welded Tube USA, Inc.; Wheatland Tube Company; and Vallourec Star L.P.).⁵ After consulting with the parties to the proceeding and taking their comments into consideration, Commerce and Interpipe signed the final suspension agreement on July 10, 2014.⁶

On July 18, 2014, Commerce published the *Final Determination* of sales at LTFV and final negative determination of critical circumstances, and simultaneously announced the suspension of the investigation on OCTG from Ukraine.⁷ On September 3, 2014, Commerce published the *Amended Final Determination* of sales at LTFV.⁸ Commerce calculated the following weighted-average dumping margins on OCTG from Ukraine in the *Amended Final Determination*:

Interpipe Europe S.A.; Interpipe Ukraine LLC; PJSC Interpipe Nizhnedneprovsky Tube Rolling Plant (aka Interpipe NTRP); and LLC Interpipe Niko Tube	7.47 percent
All Others	7.47 percent

On July 17, 2017, and July 5, 2018, Commerce and Interpipe signed amendments to the suspension agreement for OCTG from Ukraine, each of which extended the agreement for one additional year.⁹ On October 4, 2018, Commerce initiated an administrative review of the suspension agreement on OCTG from Ukraine, which has since been rescinded.¹⁰

³ *Id.*

⁴ See *Suspension of Antidumping Investigation: Certain Oil Country Tubular Goods from Ukraine*, 79 FR 41959 (July 18, 2014) (*Suspension Agreement*).

⁵ *Id.*

⁶ *Id.*

⁷ See *Certain Oil Country Tubular Goods from Ukraine: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 79 FR 41969 (July 18, 2014) (*Final Determination*); see also *Suspension Agreement* 79 FR at 41959.

⁸ See *Certain Oil Country Tubular Goods from Ukraine: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 52303 (September 3, 2014) (*Amended Final Determination*).

⁹ See *Amendment to the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine*, 82 FR 32681 (July 17, 2017); see also *Amendment to the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods From Ukraine*, 83 FR 31369 (July 5, 2018).

¹⁰ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 50077 (October 4, 2018); see also *Termination of the Suspension Agreement on Certain Oil Country Tubular Goods from Ukraine, Rescission of Administrative Review, and Issuance of Antidumping Duty Order*, 84 FR 33918 (July 16, 2019) (*Order*).

III. Background

On June 4, 2019, Commerce initiated the instant sunset review of the agreement suspending the antidumping investigation on OCTG from Ukraine, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).¹¹ Subsequent to the initiation of the sunset review, the suspension agreement on OCTG from Ukraine was terminated and an AD order was issued, effective July 10, 2019.¹²

Between June 13, 2019, and June 19, 2019, Benteler Steel/Tube (Benteler), Boomerang Tube, LLC (Boomerang), IPSCO Tubulars, Inc. (IPSCO), Vallourec Star, LP (Vallourec), Welded Tube USA Inc. (Welded Tube USA), Maverick Tube Corporation (Maverick), Tenaris Bay City, Inc. (Tenaris Bay), and the United States Steel Corporation (U.S. Steel) (collectively, the domestic interested parties) filed notices of intent to participate in this sunset review, as required by 19 CFR 351.218(d)(1)(i).¹³ On June 14, 2019, Interpipe and the Government of Ukraine (GOU) filed entries of appearance for these proceedings.¹⁴

On July 3, 2019, Interpipe and North American Interpipe, Inc. (collectively, Interpipe), an interested respondent party, and the domestic interested parties filed substantive responses in this sunset review pursuant to 19 CFR 351.218(d)(3).¹⁵ On July 8, 2019, the domestic interested parties filed a rebuttal to Interpipe's substantive response.¹⁶ In addition, on July 8, 2019, the GOU's Ministry of Economic Development and Trade placed comments on the record concerning the initiation of the sunset review of the suspended investigation on OCTG from Ukraine.¹⁷ On July 29, 2019, Commerce notified the U.S. International Trade Commission (ITC) that it had received an adequate substantive response from the respondent interested party.¹⁸

¹¹ See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 25741 (June 4, 2019).

¹² See *Order*.

¹³ See Benteler, Boomerang, IPSCO, Vallourec, and Welded Tube USA's Letter, "Oil Country Tubular Goods from Ukraine: Notice of Intent to Participate," dated June 13, 2019; see also Maverick and Tenaris Bay's Letter, "Notice of Intent to Participate in First Sunset Review of the Agreement Suspending the Antidumping Duty Investigation on Oil Country Tubular Goods from Ukraine," dated June 17, 2019; and from U.S. Steel's Letter, "Five-Year ('Sunset') Review of Agreement Suspending the Antidumping Duty Investigation on Oil Country Tubular Goods from Ukraine: Notice of Intent to Participate," dated June 19, 2019. The notices filed by the domestic interested parties were filed prior to the termination of the suspension agreement, and thus reference the suspension agreement rather than the *Order*.

¹⁴ See GOU's Letter, "Subject: Entry of Appearance: Five-year Review on Oil Country Tubular Goods from Ukraine, Case No. A-823-815," dated June 14, 2019.

¹⁵ See Domestic interested parties' Letter, "Oil Country Tubular Goods from Ukraine: Substantive Response of the Domestic Industry to Commerce's Notice of Initiation of Five-Year ('Sunset') Reviews," dated July 3, 2019 (Domestic Substantive Response); see also Interpipe's Letter, "Sunset Review of the Antidumping Duty Suspension Agreement on Certain Oil Country Tubular Goods from Ukraine: Substantive Response to Notice of Initiation," July 3, 2019 (Interpipe Substantive Response). The responses submitted by the domestic interested parties and Interpipe were filed prior to the termination of the suspension agreement, and thus reference the suspension agreement rather than the *Order*.

¹⁶ See Domestic interested parties' Letter, "Oil Country Tubular Goods from Ukraine: Rebuttal to the Substantive Response of Interpipe and North American Interpipe to Commerce's Notice of Initiation of Five-Year ('Sunset') Reviews," dated July 8, 2019 (Domestic Substantive Rebuttal).

¹⁷ See Letter from the GOU, "Certain Oil Country Tubular Goods from Ukraine, case No. A-823-815: Comments of Ukraine," dated July 8, 2019 (GOU Comments).

¹⁸ See Commerce's Letter, "Sunset Reviews Initiated on June 1, 2019," dated July 29, 2019.

IV. Scope of the Order

The merchandise covered by the *Order* is certain oil country tubular goods (OCTG) from Ukraine, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the *Order* also covers OCTG coupling stock.

Excluded from the scope of this *Order* are: Casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to this *Order* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to this *Order* may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the product coverage is dispositive.

V. Discussion of the Issues

A. Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the AD order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, Commerce shall consider both the weighted-average dumping margins

determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the AD order. In addition, section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action (SAA),¹⁹ the House Report,²⁰ and the Senate Report,²¹ Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.²² In addition, Commerce normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after the issuance of the orders; (b) imports of the subject merchandise ceased after the issuance of the orders; or (c) dumping was eliminated after the issuance of the orders and import volumes for the subject merchandise declined significantly.²³ Alternatively, Commerce 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.²⁴ Pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require Commerce to determine that revocation of an *Order* would not be likely to lead to a continuation or recurrence of sales at LTFV.²⁵ Furthermore, as a base period of import volume comparison, it is Commerce's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of the investigation may dampen import volumes and, thus, skew the comparison.²⁶

In addition, section 752(c)(3) of the Act states that the magnitude of the margin of dumping that is likely to prevail if the order were revoked shall be provided by Commerce to the ITC. Generally, Commerce selects the weighted-average dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.²⁷ In certain circumstances, however, a more recently calculated rate may be more appropriate (*e.g.*, "if dumping margins

¹⁹ See Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (SAA), *reprinted in* 1994 U.S.C.C.A.N. 4040 (1994).

²⁰ See H. Rep. No. 103-826, pt. 1 (1994) (House Report), *reprinted in* 1994 U.S.C.C.A.N. 3773 (1994).

²¹ See S. Rep. No. 103-412 (1994) (Senate Report).

²² See SAA at 879; *see also* House Report at 56.

²³ See SAA at 889-890; House Report at 63-64; Senate Report at 52; *see also Policies Regarding the Conduct of Five-Year ('Sunset') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Policy Bulletin*).

²⁴ See SAA at 889-890; *see also* House Report at 63.

²⁵ 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 (IDM) at Comment 1.

²⁶ See *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying IDM at Comment 1.

²⁷ 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 IDM at Comment 2.

have declined over the life of an order and imports have remained steady or increased, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review”).²⁸

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, Commerce announced that in five-year (*i.e.*, sunset) reviews, it will not rely on weighted-average dumping margins that were calculated using the zeroing methodology that was found to be WTO-inconsistent and was the subject of that *Final Modification for Reviews*.²⁹ However, Commerce explained in the *Final Modification for Reviews* that it “retain{s} the discretion, on a case-by-case basis, to apply an alternative methodology, when appropriate” in both investigations and administrative reviews pursuant to section 777A(d)(1)(B) of the Act.³⁰ In the *Final Modification for Reviews*, Commerce stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.³¹ Commerce 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 recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available (AFA), and dumping margins where no offsets were denied because all comparison results were positive.”³²

Below we address the comments of the interested parties.

B. Analysis

Issue 1: Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Parties’ Comments

The domestic interested parties claim that the dumping margins calculated in the investigation continue to exist for all shipments of subject merchandise because the margins were determined to be above *de minimis*.³³ Citing Commerce’s “*Policies Regarding the Conduct of Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders (Policy Bulletin)*,” the domestic interested parties argue that Commerce normally determines that the termination of a suspended investigation is likely to lead to the continuation or recurrence of dumping where “dumping continued at any level above *de minimis*” after the implementation of the suspension agreement.³⁴ The domestic interested parties note that it is not possible to otherwise assess Interpipe’s compliance with the terms of the *Suspension Agreement* because Commerce did not

²⁸ See SAA at 890-91.

²⁹ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

³⁰ *Id.* at 8102, 8105, 8109.

³¹ *Id.*

³² *Id.*

³³ See Domestic Substantive Response at 13.

³⁴ See *Policy Bulletin*, 63 FR at 18872.

complete (and ultimately rescinded) the only administrative review associated with this agreement.³⁵

The domestic interested parties also claim that a decline in the import volumes of OCTG from Ukraine further demonstrates that the termination of the suspended AD investigation would lead to the continuation or recurrence of dumping. Citing the *Policy Bulletin*, the domestic interested parties state that Commerce generally finds dumping is likely to continue or recur when it determines that import volumes of subject merchandise have declined significantly.³⁶ The domestic interested parties argue that Commerce typically uses a straightforward comparison of pre-initiation import levels and post-*Order* import levels to determine whether imports have declined significantly, noting that import volumes during the period prior to the issuance of a suspension agreement are not the most accurate nor appropriate basis for comparison due to the tendency of producers and exporters to reduce shipments upon the initiation of an investigation.³⁷

The annual imports of OCTG between 2012 (the year prior to the year of initiation) and 2018 (the year prior to the year of *Order* publication), as submitted by the domestic interested parties, are as follows³⁸:

<u>Year</u>	<u>Import Volume</u>
2012	105,559
2013	81,226
2014	51,003
2015	17,705
2016	4,025
2017	37,625
2018	82,258

The domestic interested parties state that import volumes declined significantly after the initiation of the AD investigation in 2013 and decreased further after the signing of the suspension agreement in 2014, with 2018 import volumes remaining approximately 22 percent lower than 2012 levels.³⁹ According to the domestic interested parties, the increases in imports between 2016-2017 and 2017-2018 only raise serious questions regarding the effectiveness of the suspension agreement.⁴⁰ The domestic interested parties claim that these two trends support the argument that terminating the *Order* on imports of OCTG from Ukraine would likely lead to the continuation of dumping in the U.S. market.

³⁵ See Domestic Substantive Response at 13.

³⁶ See *Policy Bulletin*, 63 FR at 18872.

³⁷ See Domestic Substantive Response at 14.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

Interpipe Comments

Interpipe argues that Commerce should find that the termination of the suspended dumping investigation is not likely to lead to the continuation or recurrence of dumping. Citing Commerce's *SAA* and *Policy Bulletin*, Interpipe states that Commerce "will normally determine that the revocation of an antidumping order or termination of a suspended dumping investigation is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order or the suspension agreement, as applicable, and import volumes remained steady or increased."⁴¹ Interpipe also requests that Commerce consider companies' relative market shares when analyzing whether import volumes remain steady or increase, particularly in light of the disruptions to the Ukrainian economy caused by the conflict in Ukraine.⁴²

Interpipe claims that dumping was necessarily eliminated after the issuance of the suspension agreement, as the terms of the agreement required Interpipe to make any price revisions necessary to completely eliminate the total amount by which the normal value of its OCTG exceeds the U.S. price of its subject merchandise.⁴³ Interpipe further argues that import levels remained steady as a percentage of the OCTG market during this time, which it demonstrates using a comparison of U.S. rig counts prior to the submission of the petition and at the end of the sunset review period as a proxy for overall U.S. OCTG consumption.⁴⁴ According to Interpipe, although U.S. rig counts dropped by 44 percent from pre-petition to pre-sunset review levels, OCTG imports from Ukraine only dropped 16 percent by comparison during this time, indicating that Ukraine does not need to engage in dumping in order to access U.S. OCTG markets.⁴⁵

Interpipe characterizes this trend as a strong indicator that termination of the suspended dumping investigation (and by extension, the *Order*) is not likely to lead to a continuation or recurrence of dumping in light of the initial decline of the Ukrainian economy. As described by Interpipe, the steep fall in Ukrainian imports that occurred between 2014 and 2016 must be viewed in the context of the hostilities in Ukraine that began in February 2014.⁴⁶ According to Interpipe, the conflict caused Ukraine's GDP to fall USD \$50 billion in 2013-2014 and USD \$42 billion in 2014-2015, while also causing the country's rig count to drop from 1,862 (2014) to 978 (2015) and 509 (2016).⁴⁷ Interpipe concludes that these trends, in combination with its monitored participation in the OCTG suspension agreement, offer sufficient proof to Commerce that dumping will not continue or recur in the absence of the suspension agreement (and by extension, the *Order*).

⁴¹ See *Policy Bulletin*, 63 FR at 18872, citing the *SAA* at 889-890.

⁴² See Interpipe Substantive Response at 3.

⁴³ *Id.*

⁴⁴ *Id.* at 3-4.

⁴⁵ *Id.*

⁴⁶ *Id.* at 4.

⁴⁷ *Id.* at 4-5.

GOU's Comments

In its comments, the GOU requests special consideration within the context of this sunset review due to longstanding armed conflicts in Crimea and eastern Ukraine. The GOU states that a “considerable part of the production facilities of Ukrainian industries, especially metallurgical, is concentrated in the occupied territories,” which has impacted the country’s “capacities, production, cost of production and export potential” as well as critical infrastructure and transportation networks.⁴⁸ According to the GOU, the country’s metallurgical industry is responsible for employing tens of thousands of Ukrainian workers and providing significant tax revenue to the government, which is used to support Ukraine’s defense, infrastructure, and financial sectors.⁴⁹ The GOU also highlights the changed circumstances stemming from the additional 25 percent tariff on steel products under Section 232 of the Trade Expansion act, which the GOU states would have absorbed any alleged dumping in import prices, if it existed.⁵⁰ As a result, the GOU claims that any additional antidumping measures by the United States would create distortions in the competitive market by overcorrecting for any perceived unfair trade disparities.⁵¹

The GOU also claims that terminating the *Order* on OCTG from Ukraine will not lead to continuation or recurrence of dumping because Ukraine has remained entirely compliant with the agreement since it was signed in 2014 and has always provided all necessary information to Commerce concerning the suspension agreement proceedings. Citing data from the International Trade Centre, the GOU claims that Ukrainian imports of OCTG only accounted for 2.15 percent of the U.S. market in 2018, and states that Ukraine’s priority markets for OCTG are CIS and EU countries due to their geographical proximity and accessible market terms.”

Domestic Industry Rebuttal

The domestic interested parties argue that Interpipe’s characterization of OCTG import volumes as remaining steady or increasing is misleading. According to the domestic interested parties, the drop in OCTG imports that occurred between the year prior to the filing of the petition (105,559 MT in 2012) and the year in which the AD *Order* was issued (51,003 MT in 2014) accurately demonstrates the discipline of the suspension agreement, which caused import volumes to fall to 4,025 MT by 2016.⁵² In contrast, the domestic interested parties claim that the recent uptick in Ukrainian exports in 2017 and 2018 is not an indication that OCTG is being sold fairly, nor that Interpipe would sell OCTG to the U.S. market at fair prices without the discipline of a suspension agreement. Rather, the domestic interested parties attribute this trend to the time lag embedded in normal value suspension agreements.⁵³

⁴⁸ See GOU’s Comments at 1-2.

⁴⁹ *Id.*

⁵⁰ *Id.* at 2.

⁵¹ *Id.*

⁵² See Domestic Substantive Rebuttal at 2.

⁵³ *Id.*

The domestic interested parties also claim that the actions of Interpipe and the Ukrainian government outside the context of the ongoing sunset review raise doubt regarding the legitimacy of whether Interpipe can and will sell OCTG to the U.S. market fairly. The domestic interested parties note that both Interpipe and the GOU have requested that Commerce suspend the suspension agreement for five years and grant Interpipe a waiver from duties paid under Section 232 of the Trade Expansion Act of 1962.⁵⁴ The domestic interested parties believe these requests indicate that Interpipe is unable to commit to the suspension agreement's requirement that it sell OCTG in the U.S. at prices above its costs and expenses (including 232 duties owed), driving it to request special treatment and a change in the suspension agreement's calculation methodology.⁵⁵

Finally, the domestic interested parties claim that Interpipe's invocation of economic dislocation due to the conflict in Ukraine is not based on its personal commercial experience as a prospering global company.⁵⁶ According to the domestic interested parties, Interpipe has cited the conflict's adverse impact on its operations in both its support for signing the suspension agreement as well as its support for the termination of this same agreement, demonstrating contradictory arguments.⁵⁷ The domestic interested parties argue that the ongoing conflict, while serious, does not justify allowing Interpipe to export to the U.S. without the discipline of either a suspension agreement or an order.

Commerce's Position

Commerce generally finds that revocation of an order or termination of a suspension agreement is likely to lead to a continuation or recurrence of dumping when: (1) dumping continued at any level above *de minimis* after the issuance of the order or the suspension agreement, as applicable; (2) imports of the subject merchandise ceased after issuance of the order or the suspension agreement, as applicable; or (3) dumping was eliminated after the issuance of the order or the suspension agreement, as applicable, and import volumes for the subject merchandise declined significantly.⁵⁸

As an initial matter, the domestic interested parties, Interpipe, and the GOU commented on the continuation or termination of the suspension agreement, but because subsequent to the initiation of the sunset review, the suspension agreement on OCTG from Ukraine was terminated and an AD order was issued, effective July 10, 2019,⁵⁹ we are not addressing those comments here.

With respect to dumping margins, Commerce calculated weighted-average dumping margins in the original investigation of 7.47 percent, and more recently calculated margins do not exist because no administrative reviews have been completed of the *Order* since the issuance or termination of the suspension agreement. Therefore, the weighted-average dumping margins

⁵⁴ *Id.* at 3.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See *Policy Bulletin*, 63 FR at 18872.

⁵⁹ See *Order*.

determined in the investigation are demonstrative of the behavior of Ukrainian manufacturers, producers, or exporters without the discipline of an order in place.

With respect to import volumes, according to information from Dataweb submitted by the petitioners, imports of OCTG from Ukraine between 2012 and 2018 were as follows: 105,559 MT (2012), 81,226 MT (2013), 51,003 MT (2014), 17,705 MT (2015), 4,025 MT (2016), 37,625 MT (2017), and 82,258 MT (2018).⁶⁰ The data show that import levels in 2018 were 22 percent lower than in 2012, demonstrating that import behavior significantly declined and did not recover to pre-investigation levels over the course of the suspension agreement. Throughout this time, OCTG pricing was limited by the suspension agreement. Commerce believes that it is reasonable to find that the overall decline in import volumes and prices eliminating sales at less-than-fair-value are in part connected to the discipline imposed by the suspension agreement, and that in the absence of an AD order, import volumes would increase. In addition, Commerce does not find Interpipe's comparison of U.S. rig counts to Ukrainian OCTG import levels to be compelling support for Interpipe's claim that Ukrainian producers do not need to engage in dumping in order to access U.S. OCTG markets. Commerce is aware of a number of other countries that export OCTG to the United States.⁶¹ We also note that the GOU's comments indicate Ukraine has only accounted for, at most, a 2.5 percent market share of OCTG imports between 2014 and 2018, precluding us from making confident assumptions regarding a determinative relationship between U.S. rig counts and Ukrainian OCTG imports.⁶²

Commerce lacks the ability or authority to judge the degree to which the conflict in eastern Ukraine, installation of oil rigs in the United States, or other factors may have affected the Ukrainian economy or U.S. imports of subject merchandise. Regardless of the effect of the conflict, Ukrainian manufacturers, producers, and exporters have been unable to demonstrate that they are capable of shipping at pre-investigation levels without dumping. In accordance with the *Policy Bulletin*, Commerce finds that termination of this suspension agreement is likely to lead to a continuation or recurrence of dumping because import values dropped significantly after the suspension agreement went into effect, and because we have no reason to believe that the terms of the suspension agreement did not thereafter eliminate sales at LTFV of OCTG from Ukraine in the U.S. market.⁶³

⁶⁰ See *Domestic Substantive Response* at 14.

⁶¹ See *Certain Oil Country Tubular Goods From India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 53691 (September 10, 2014).

⁶² See GOU Comments at 3.

⁶³ See *Suspension of Antidumping Investigation: Certain Oil Country Tubular Goods From Ukraine*, 79 FR 41959 (“[I]n accordance with section 734(b) of the Act, we have determined that the Suspension Agreement covers substantially all imports of the subject merchandise and will eliminate completely sales at LTFV of imported subject merchandise.”).

Issue 2: Magnitude of the Margin Likely to Prevail

Domestic Industry Comments

The domestic interested parties claim that the dumping margin established in the original investigation represents the magnitude of the dumping margin that is likely to prevail if the *Order* is terminated. Citing the *SAA* and the *Policy Bulletin*, the domestic interested parties argue that Commerce will generally select the dumping margins calculated in the investigation because they are the only calculated rates that reflect the behavior of exporters and foreign government without the discipline of an order or suspension agreement in place.⁶⁴ Following this logic, the domestic interested parties believe that Commerce should assign a 7.47 percent dumping margin to Interpipe and all other Ukrainian producers and/or exporters.

Interpipe Comments

Interpipe argues that a zero percent margin is likely to prevail if Commerce revokes the *Order*. Citing the *Policy Bulletin*, Interpipe states that Commerce “may, in response to {an} argument from an interested party, provide to the Commission a more recently calculated margin for a particular company where, for that particular company, dumping margins declined or dumping was eliminated after the issuance of the order or the suspension agreement, as applicable, and import volumes remained steady or increased.”⁶⁵ Interpipe claims that, per the terms of the suspension agreement, it necessarily revised its prices in order to completely eliminate any amount by which the normal value of its OCTG exceeds the U.S. price of its subject merchandise.⁶⁶ According to Interpipe, the prevailing margin should be zero because it has eliminated all sales made at LTFV.

Commerce’s Position

Commerce agrees that the only dumping margin indicative of the margin likely to prevail if the *Order* was terminated is the 7.47 percent rate calculated during the original investigation. This is the only calculated dumping margin on the record that accurately reflects the behavior of Ukrainian exporters without the discipline of the *Order* in place, since the ongoing administrative review of the suspension agreement on OCTG from Ukraine was terminated upon the issuance of the *Order* and no other administrative reviews were completed.

⁶⁴ See Domestic Substantive Response at 15-16.

⁶⁵ See Interpipe Substantive Response at 5.

⁶⁶ *Id.* at 3.

VI. Recommendation

Based on our analysis of the responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish these preliminary results of review in the *Federal Register*.

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Agree

Disagree

9/23/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance