



A-823-815  
Sunset Review  
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April 29, 2020

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

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the First  
Sunset Review of the Antidumping Duty Order on Oil Country  
Tubular Goods from Ukraine

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## **I. Summary**

We have analyzed the comments 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 memorandum. Below is the complete list of the issues addressed for the final results:

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

## **II. Background**

On July 29, 2013, the Department of Commerce (Commerce) initiated the less-than-fair-value investigation on OCTG from Ukraine.<sup>1</sup> 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.<sup>2</sup> On July 18, 2014,

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<sup>1</sup> 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).

<sup>2</sup> See *Suspension of Antidumping Investigation: Certain Oil Country Tubular Goods from Ukraine*, 79 FR 41959 (July 18, 2014) (*Suspension Agreement*).



Commerce published the *Final Determination* of sales at less than fair value and final negative determination of critical circumstances, and simultaneously announced the suspension of the investigation on OCTG from Ukraine.<sup>3</sup> On September 3, 2014, Commerce published the *Amended Final Determination* of sales at less than fair value.<sup>4</sup> On September 5, 2014, the International Trade Commission (ITC) published its final affirmative determination of injury.<sup>5</sup> 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.<sup>6</sup> On October 4, 2018, Commerce initiated an administrative review of the suspension agreement on OCTG from Ukraine, which has since been rescinded.<sup>7</sup>

On June 4, 2019, Commerce initiated the instant sunset review of the agreement suspending the less-than-fair-value investigation on OCTG from Ukraine, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>8</sup> Subsequent to the initiation of the sunset review, the suspension agreement on OCTG from Ukraine expired by its own terms and an antidumping order was issued, effective July 10, 2019.<sup>9</sup>

On September 23, 2019, Commerce issued the *Preliminary Results*<sup>10</sup> of this sunset review, finding that dumping was likely to continue or recur if the *Order* were revoked, and determined that revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping at the magnitude of a weighted-average margin of dumping of 7.47 percent.<sup>11</sup> We invited parties to comment on the *Preliminary Results*. On October 4, 2019,<sup>12</sup> Interpipe requested an extension to the deadline to submit factual information regarding the size of the U.S. OCTG market, which the company subsequently submitted on October 8, 2019.<sup>13</sup> On October 30, 2019, we received a

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<sup>3</sup> 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.

<sup>4</sup> 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*).

<sup>5</sup> See *Certain Oil Country Tubular Goods from India, Korea, the Philippines, Taiwan, Thailand, Turkey, Ukraine, and Vietnam*, 79 FR 53080 (September 5, 2014).

<sup>6</sup> 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).

<sup>7</sup> 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*).

<sup>8</sup> See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 25741 (June 4, 2019).

<sup>9</sup> See *Order*, 84 FR at 33918.

<sup>10</sup> See *Oil Country Tubular Goods from Ukraine: Preliminary Results of the First Five-Year Sunset Review of the Antidumping Duty Order*, 84 FR 51510 (September 30, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (Preliminary Results Memorandum).

<sup>11</sup> *Id.* at 51511.

<sup>12</sup> See Interpipe's Letter, "Certain Oil Country Tubular Goods from Ukraine: Request to Extend the Deadline to Submit Factual Information Regarding the Size of the U.S. OCTG Market," dated October 4, 2019; see also Commerce's Letter, "Certain Oil Country Tubular Goods from Ukraine: Extension of Deadline to Submit Certain New Factual Information," dated November 7, 2019.

<sup>13</sup> See Interpipe's Letter, "Certain Oil Country Tubular Goods from Ukraine: Factual Information Regarding the Size of the U.S. OCTG Market," dated October 8, 2019 (Interpipe Market Information).

case brief from the Government of Ukraine (GOU),<sup>14</sup> as well as a request for a hearing from the domestic interested parties.<sup>15</sup> On October 31, 2019, we received a case brief from respondent Interpipe and North American Interpipe (collectively, Interpipe).<sup>16</sup> On November 4, 2019, we received a rebuttal brief from the domestic interested parties.<sup>17</sup> On November 6, 2019, the domestic interested parties withdrew their request for a hearing.<sup>18</sup>

On January 30, 2020, Commerce extended the deadline for the final results of this sunset review by 90 days.<sup>19</sup> The revised deadline for the final results is April 29, 2020.<sup>20</sup> On April 20, 2020, and April 27, 2020, Commerce participated in phone calls with representatives of Interpipe,<sup>21</sup> and the domestic interested parties,<sup>22</sup> respectively, concerning issues discussed in the case and rebuttal briefs for this sunset review.

### III. 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,

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<sup>14</sup> See GOU's Letter, "Certain Oil Country Tubular Goods from Ukraine, case No. A-823-815: Case Brief of Ukraine," dated October 30, 2019 (GOU Case Brief).

<sup>15</sup> See Domestic Interested Parties' Letter, "First Sunset Review of the Antidumping Duty Order on Oil Country Tubular Goods from Ukraine: Request for Hearing," dated October 30, 2019.

<sup>16</sup> See Interpipe's Letter, "Certain Oil Country Tubular Goods from Ukraine: Interpipe Case Brief," dated October 31, 2019 (Interpipe Case Brief).

<sup>17</sup> See Domestic Interested Parties' Letter, "First Sunset Review of the Antidumping Duty Order on Oil Country Tubular Goods from Ukraine: Rebuttal Brief of Domestic Industry," dated November 4, 2019 (Domestic Parties' Rebuttal Brief).

<sup>18</sup> See Domestic Interested Parties Letter, "First Sunset Review of the Antidumping Duty Order on Oil Country Tubular Goods from Ukraine: Withdrawal of Request for Hearing," dated November 6, 2019.

<sup>19</sup> See Memorandum, "Extension of Time Limits for Final Results of the First Sunset Review of the Antidumping Duty Order on Oil Country Tubular Goods from Ukraine," dated January 30, 2020 (Extension of Final Results).

<sup>20</sup> See Extension of Final Results at 4.

<sup>21</sup> See Memorandum, "Ex Parte Phone Call with Interpipe and North American Interpipe," dated April 24, 2020.

<sup>22</sup> See Memorandum, "Ex Parte Phone Call with Domestic Interested Parties," dated April 29, 2020.

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.

#### **IV. Discussion of the Issues**

##### **Issue 1: Likelihood of Continuation or Recurrence of Dumping**

###### *Interpipe's Market Information and Case Brief*

In its initial substantive response, Interpipe supported its claim that the level of Ukrainian OCTG imports remained steady as a percentage of the U.S. OCTG market during the five-year period of review by submitting data on U.S. rig counts as a proxy for U.S. OCTG consumption.<sup>23</sup> In the *Preliminary Results* of this sunset review, Commerce stated that it did not find this comparison to be “compelling support” for Interpipe’s claim that Ukraine does not need to engage in dumping to access the U.S. market.<sup>24</sup> Commerce also noted that Ukraine’s relatively small share of the U.S. market (which, according to the GOU, did not exceed 2.15 percent<sup>25</sup> during the review period) precluded us from “making confident assumptions regarding a determinative relationship between U.S. rig counts and Ukrainian OCTG imports.”<sup>26</sup> Ultimately, Commerce claimed that it lacked the ability or authority to judge how the conflict in Ukraine, installation of U.S. oil rigs, or other factors may have affected the Ukrainian economy or U.S. imports of Ukrainian OCTG.<sup>27</sup>

In response, Interpipe submitted five market research reports which it claims can be used to more accurately determine Ukraine’s share of the U.S. OCTG market by using data that directly

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<sup>23</sup> See 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,” dated July 3, 2019 (Interpipe Substantive Response), at 3-4.

<sup>24</sup> Preliminary Results Memorandum at 11.

<sup>25</sup> This market share percentage was erroneously listed as “2.5 percent” in the *Preliminary Results*,

<sup>26</sup> See GOU’s Letter, “Certain Oil Country Tubular Goods from Ukraine, case No. A-823-815: Comments of Ukraine,” dated July 8, 2019 (GOU Comments) at 3.

<sup>27</sup> See Preliminary Results Memorandum at 11.

estimates U.S. OCTG consumption.<sup>28</sup> Citing Commerce’s *Sunset Policy Bulletin*,<sup>29</sup> Interpipe argues that in situations where dumping was eliminated after the issuance of a suspension agreement and import volumes remained steady or increased, Commerce “normally will consider companies’ relative market share so as to avoid situations, like here, where a fall in imports is not a function of the ‘discipline of the order,’ but rather a fall in demand.”<sup>30</sup> In its case brief, Interpipe claims that the data contained in these market research reports supports the company’s argument that Ukraine’s share of the U.S. OCTG market between 2013 and 2018 correlates closely to Ukrainian GDP, both of which declined and then increased during this time.<sup>31</sup> Interpipe also argues that it was able to recapture its pre-petition share of the U.S. OCTG market (which it says increased by 0.02 percent overall between 2013 and 2018),<sup>32</sup> and that the fall in OCTG imports from Ukraine during the review period (-11.92 percent) was less severe than the overall fall in U.S. OCTG consumption during the review period (-13.19 percent).<sup>33</sup> Interpipe says that these trends support its claim that, despite the impacts of the conflict in Ukraine, the company shipped OCTG at fair prices to the U.S. throughout the suspension agreement while ultimately recovering its pre-petition market share.<sup>34</sup>

Interpipe also reiterates earlier claims that dumping was necessarily eliminated after the issuance of the suspension agreement, and that Commerce has never found Interpipe to have violated the terms of this agreement.<sup>35</sup> The company argues that an increase in imports from Interpipe between 2016-2018 was not due to undetected violations of the suspension agreement (as alleged by the domestic industry), but instead can be attributed to changes in the Ukrainian wartime economy coupled with changes in U.S. OCTG demand, as noted above.<sup>36</sup> According to Interpipe, Commerce should consider the “unique facts and circumstances” surrounding the conflict in Ukraine when assessing whether to terminate the *Order* on OCTG, just as it did previously when extending the suspension agreement.

#### *Domestic Interested Parties’ Rebuttal Brief*

The domestic interested parties assert that Commerce’s *Preliminary Results* is consistent with the statutory framework governing five-year reviews of an existing antidumping order, and that Interpipe’s behavior under the suspension agreement doesn’t necessarily reflect its behavior absent the *Order*, since Interpipe was required to sell above NV.<sup>37</sup> Citing the Ukrainian import volumes on the record, they claim that Interpipe initially decreased its export volume drastically and then requested that Commerce change its NV methodology to allow Interpipe to continue to

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<sup>28</sup> See Interpipe Market Data at 1.

<sup>29</sup> See *Policies Regarding the Conduct of Five-Year (‘Sunset’) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*), citing Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (SAA)..

<sup>30</sup> See Interpipe Case Brief at 5.

<sup>31</sup> *Id.* at 5-9.

<sup>32</sup> *Id.* at 7-8.

<sup>33</sup> *Id.* at 8-9.

<sup>34</sup> *Id.* at 9.

<sup>35</sup> *Id.* at 2-3.

<sup>36</sup> *Id.* at 3-4.

<sup>37</sup> See Domestic Parties’ Rebuttal Brief at 1 and 3.

supply the U.S. market.<sup>38</sup> According to domestic interested parties, Interpipe was highly constrained by the suspension agreement, and its repeated requests for extensions of the agreement imply that Interpipe cannot ship to the United States without dumping.<sup>39</sup>

The domestic interested parties state that Commerce was correct to reject Interpipe's arguments regarding its relative U.S. market share. They claim that regardless of whether rig counts or domestic consumption are used to measure the size of the U.S. OCTG market, Interpipe's market share is not a meaningful indicator of the likelihood that the company would dump if the *Order* were revoked.<sup>40</sup> The domestic interested parties allege that Commerce should reject Interpipe's invitation to analyze import volumes in relation to relative market share, and continue to determine that the 22 percent absolute decline in U.S. import volumes between 2012 (105,559 MT) and 2018 (81,226 MT) is connected to the discipline of the suspension agreement.<sup>41</sup> Ultimately, according to domestic interested parties, there is no evidence to support the idea that the Ukraine-Russia conflict has had a material impact on the volume or pricing of Interpipe's OCTG shipments.

Finally, the domestic interested parties claim that the recent increase in volume (between 2016 and 2018) should be attributed to the NV calculation methodology used in the suspension agreement.<sup>42</sup> They note that NVs for any given period are calculated based on costs from an earlier period, such that rising production costs would have benefitted Interpipe and allowed them to increase their U.S. import volumes under the terms of the suspension agreement.<sup>43</sup> According to the domestic interested parties, these increasing volumes do not support the conclusion that dumping is unlikely to occur without the discipline of an antidumping order.

#### *GOU's Comments*

The GOU requests that Commerce take into consideration the effect of the conflict in Ukraine on the volume of OCTG exports to the United States during the period under examination. The GOU argues that a considerable percentage of Ukraine's metallurgical production facilities are located in conflict areas, and that the occupation of this region has had caused significant material losses to infrastructure, social, and industrial facilities.<sup>44</sup> According to the GOU, Ukraine's GDP mirrors, and explains, the fall and rise in import volumes of Ukrainian OCTG to the United States, and a steady domestic decrease in steel production between 2012 and 2018 has led to a decrease in all Ukrainian exports of steel products.<sup>45</sup> The GOU claims that Commerce has already acknowledged these challenges by entering into a suspension agreement with Ukrainian producers, and then extending this agreement twice.<sup>46</sup> Finally, the GOU argues that

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<sup>38</sup> *Id.* at 5-6.

<sup>39</sup> *Id.* at 4.

<sup>40</sup> *Id.* at 10.

<sup>41</sup> *Id.* at 8.

<sup>42</sup> *Id.* at 8-9.

<sup>43</sup> *Id.*

<sup>44</sup> *See* GOU Case Brief at 4-5.

<sup>45</sup> *Id.* at 7-8.

<sup>46</sup> *Id.* at 6.

the terms of the suspension agreement have never been violated by Ukrainian producers, and that this compliance should be considered in the final results.<sup>47</sup>

### Commerce Analysis:

In accordance with section 751(c)(1)(A) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping. In determining whether revocation of an antidumping duty order or suspended investigation would be likely to lead to continuation or recurrence of sales of the subject merchandise at less than fair value, section 752(c)(1) of the Act directs Commerce to consider “the weighted average dumping margins determined in the investigation and subsequent reviews,” and “the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order or acceptance of the suspension agreement.”<sup>48</sup> 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),<sup>49</sup> the House Report,<sup>50</sup> and the Senate Report,<sup>51</sup> Commerce’s determinations of likelihood will be made on an order-wide, rather than a company-specific, basis. Commerce normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when: (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; (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly; or (d) there are declining import volumes accompanied by the continued existence of dumping margins after the issuance of the order.<sup>52</sup> Alternatively, “declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.”<sup>53</sup> 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 less than normal value.<sup>54</sup> Furthermore, as a base period for import volume comparison, it is Commerce’s practice to use the calendar year immediately preceding the filing of the petition, as the submission of a petition for relief and the initiation of the investigation may

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<sup>47</sup> *Id.* at 7.

<sup>48</sup> See section 752(c)(1) of the Act; see also SAA at 889.

<sup>49</sup> *Id.*

<sup>50</sup> See H. Rep. No. 103-826, pt. 1 (1994) (House Report), reprinted in 1994 U.S.C.A.N. 3773 (1994).

<sup>51</sup> See S. Rep. No. 103-412 (1994) (Senate Report).

<sup>52</sup> See SAA at 889-90; House Report at 63-64; Senate Report at 52.

<sup>53</sup> See SAA at 889-90.

<sup>54</sup> 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.

dampen imports, thereby skewing the comparison to exporter behavior without the discipline of an order or suspension agreement in place.<sup>55</sup>

For the reasons discussed below, we continue to find that, while dumping may have been eliminated during the pendency of the *Suspension Agreement*, which covered almost the entire five-year review period, import volumes have fluctuated greatly and have not recovered to pre-Petition levels; thus, a continuation or recurrence of dumping is likely absent the discipline of the *Order*.<sup>56</sup>

As noted above, approximately one month after initiating this sunset review on June 4, 2019, the *Suspension Agreement* on OCTG from Ukraine expired under its own terms, and we issued the *Order* effective July 10, 2019.<sup>57</sup> Also as noted above, along with the issuance of the *Order*, Commerce rescinded the administrative review of the *Suspension Agreement*, as there was no longer a suspension agreement to review.<sup>58</sup> The statute states that, in determining whether “revocation of an antidumping duty order or termination of a suspended investigation under section 734 {of the Act} would be likely to lead to continuation or recurrence of sales at less than fair value,” Commerce “shall consider . . . the weighted average dumping margins determined in the investigation and subsequent reviews.”<sup>59</sup> There have been no administrative reviews since the beginning of the *Suspension Agreement* or the imposition of the *Order*, and the “weighted average dumping margins determined in the investigation and subsequent reviews” consist solely of the 7.47 percent rate determined in the *Amended Final Determination*.<sup>60</sup>

Interpipe argues that dumping was necessarily eliminated after the issuance of the *Suspension Agreement* because Interpipe agreed to make the necessary price revisions to eliminate completely the amount by which normal value exceeded the U.S. price of its subject merchandise, such that any imports during the sunset review period were, by definition, “fairly traded.”<sup>61</sup> Interpipe also notes that Commerce never made a finding that it failed to comply with the terms of the *Suspension Agreement*.<sup>62</sup> It is true that, by its terms, the now-expired *Suspension Agreement* provided that “each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (‘NV’) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement.”<sup>63</sup> Thus, we continue to have “no reason to believe that the terms of the *Suspension Agreement* did not { } eliminate sales at” less than normal value following the imposition of the *Suspension Agreement*.<sup>64</sup> However, we note that “the present absence of dumping is not

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<sup>55</sup> 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.

<sup>56</sup> See *Preliminary Results*, and accompanying PDM at 11.

<sup>57</sup> See *Order*, 84 FR at 33918.

<sup>58</sup> *Id.*, 84 FR at 33919.

<sup>59</sup> See section 752(c)(1)(A) of the Act; see also *Sunset Policy Bulletin*, 63 FR at 18872.

<sup>60</sup> *Id.*; see also *Amended Final Determination*, 79 FR at 52304.

<sup>61</sup> See Interpipe Case Brief at 2.

<sup>62</sup> *Id.* Interpipe accounted for substantially all of the exports from Ukraine of subject merchandise, and, therefore, was the lone signatory to the *Suspension Agreement*.

<sup>63</sup> See *Suspension Agreement*, 79 FR at 41960.

<sup>64</sup> See PDM at 11.



necessarily indicative of how exporters would behave in the absence of the order or agreement.”<sup>65</sup> This is because “[e]xporters may have ceased dumping because of the existence of an order or suspension agreement.”<sup>66</sup> Furthermore, “Commerce will examine the relationship between dumping margins, or the absence of margins, and the volume of imports of the subject merchandise, comparing the periods before and after the issuance of an order or the acceptance of a suspension agreement.”<sup>67</sup> Accordingly, we have also considered the import volumes of OCTG from Ukraine into the United States during the sunset review period.<sup>68</sup>

Ukraine shipped slightly more than 105 thousand tons of OCTG to the United States in 2012 (the full calendar year before the submission of the Petition, filed in July 2013).<sup>69</sup> Import volumes then declined consistently and precipitously, by 20 to 75 percent annually before hitting a low in 2016 of only four thousand tons, more than a 96 percent decrease from the pre-Petition, 2012 level.<sup>70</sup> Import volumes started rising in the last two years of the five-year period of review, reaching more than 37 thousand tons in 2017 and more than 82 thousand tons in 2018.<sup>71</sup> Even by the end of the five-year period (*i.e.*, calendar year 2018), import volume remained 22 percent lower than in 2012. Thus, import levels were well below pre-Petition levels for each year during the five-year period.<sup>72</sup> Put another way, import volumes fell after the Petition was filed, fell even more after the imposition of provisional measures, continued decreasing significantly after the now-expired *Suspension Agreement* went into place, and never recovered to pre-Petition volumes during the five-year period. This continues to support our finding in the *Preliminary Results* that revocation of the *Order* would likely lead to a continuation or recurrence of dumping.

Interpipe and the GOU attribute the fluctuations in shipments to a decline in U.S. demand, which Interpipe measures by reference to privately published U.S. prime shipment data, and disruptions caused by the Russian invasion, which Interpipe and the GOU measure by reference to Ukrainian GDP. The parties argue that U.S. demand followed a pattern which is somewhat similar to the pattern of Interpipe’s shipments. U.S. demand, however, rose significantly from 2013 to 2014 before suffering comparable declines in 2015 and 2016, and then rebounding in 2017 and 2018.<sup>73</sup> U.S. demand varied far less than Interpipe’s shipments, and thus Interpipe’s market share fluctuated over the five-year review period. For example, while Interpipe emphasizes that its

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<sup>65</sup> See SAA at 890; *see also* section 752(c)(4) of the Act.

<sup>66</sup> *Id.*

<sup>67</sup> See SAA at 889.

<sup>68</sup> Interpipe is the only known producer and exporter of OCTG from Ukraine. See Interpipe Substantive Response at 5.

<sup>69</sup> 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) at 14.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> See, e.g., *Non-Oriented Electric Steel from People’s Republic of China, Germany, Japan, Republic of Korea, Sweden, and Taiwan: Final Results of Expedited First Sunset Reviews of Antidumping Duty Orders*, 85 FR 11337 (February 27, 2020), and accompanying Issues and Decision Memorandum at 9 (regarding Sweden, “[a]lthough import volumes between 2016 and 2018 did not decrease consistently, import volumes remained below pre-Order volumes each year”).

<sup>73</sup> See Interpipe Market Information at Exhibits 1-A through 1-E.

market share in 2018 was roughly the same as before the Petition,<sup>74</sup> it was far lower throughout most of the five-year review period, dropping to a small fraction of its pre-Petition level in 2016.

While we have examined Interpipe's market share data, along with absolute import volumes, we nevertheless consider Interpipe's shipments over the five-year review period to indicate that revocation of the *Order* would likely lead to a recurrence of dumping. First, as described above, Interpipe's import levels did not return to pre-Petition levels during the five-year period, never reaching more than 78 percent of the 2012 import volume. While Interpipe finished the five-year period at 78 percent of pre-Petition import levels, as described above, volumes were as low as four percent during the preceding four years, with Interpipe shipping only four thousand tons in 2016. While Interpipe's shipments show a rough correlation with U.S. demand, the drop in shipments after the imposition of provisional measures is telling,<sup>75</sup> with import volumes in 2014 more than 50 percent lower than in 2012.<sup>76</sup> This drop occurred despite a significant increase in U.S. demand in 2014.<sup>77</sup> At almost exactly the same time that Commerce began collecting cash deposits, Russia invaded the Crimea (February 28, 2014).<sup>78</sup> To the extent that this drop is even partially the result of the imposition of cash deposits (and later the *Suspension Agreement*), it is evidence of Interpipe's inability to ship at pre-Petition levels without dumping.

Interpipe attributes its low market share during 2014-2017 to the Russian invasion, which it argues impeded Ukrainian production and exports.<sup>79</sup> Interpipe argues that there is a rough correlation between its market share and Ukrainian GDP, which it views as a proxy for the disruptions caused by the hostilities. However, while there is a rough correlation between Interpipe's market share and Ukrainian GDP, we find that the GDP variable does not fully explain Interpipe's poor shipment performance during the five-year period. For example, Interpipe's market share suffered its biggest drop between 2015 and 2016 (two years after the invasion), but Ukrainian GDP actually rose from 2015 to 2016.<sup>80</sup>

Interpipe argues that it was unable to maintain consistent U.S. market share over the five-year period because of economic disruptions caused by Russian hostilities, rather than the discipline

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<sup>74</sup> Commerce addresses this claim below.

<sup>75</sup> The preliminary determination was signed on February 14, 2015. On the same day, parties initialed a draft suspension agreement. Effective February 25, 2015, the day of publication of the preliminary determination in the *Federal Register*, Customs and Border Protection (CBP) began suspending entries and collecting cash deposits at the instruction of Commerce pursuant to the preliminary determination. On July 10, 2014, the final suspension agreement was signed and Commerce instructed CBP to end the suspension of entries and the collection of cash deposits. Thus, Interpipe was subject to cash deposits from February 25, 2015 through July 10, 2014, and to the *Suspension Agreement* thereafter.

<sup>76</sup> See Domestic Substantive Response at 14 (table showing import volumes from 2012 through 2018). Import volumes dropped an additional 65 percent in 2015, and then 77 percent more in 2016.

<sup>77</sup> Compare new prime shipment and consumption levels in Exhibit 1-A with Exhibit 1-B of Interpipe Market Information.

<sup>78</sup> See Interpipe Substantive Response at Exhibit 3.

<sup>79</sup> See Interpipe Case Brief at 9 ("In fact, the steep fall in Ukrainian imports—especially from early 2014 to 2016—must be viewed in the context of the February 2014 beginning of hostilities between Ukraine and Russia over Crimea and, again quoting the Department 'the unique facts and circumstances in Ukraine which have affected Interpipe's operations.'" (internal citations omitted))

<sup>80</sup> See Domestic Substantive Response at 14 (table showing import volumes from 2012 through 2018) and Interpipe Case Brief at 7 (chart outline Ukraine GDP).

of provisional measures and the *Suspension Agreement*. However, Interpipe failed to support this argument with direct evidence, such as data indicating it was operating at a lower capacity during the five-year period than before the invasion; that its sales globally were impeded and not just its exports to the United States; or examples of how its production had been directly hindered by ongoing hostilities throughout the five-year period.

Interpipe's claim that it managed to completely regain market share in 2018 is also problematic. This claim is based on a calculation that averages data for 2012 with data for 2013. Because Interpipe's shipments fell more than 20 percent in 2013, but U.S. demand remained relatively steady, this calculation lowers Interpipe's pre-Petition market share and thus makes its 2018 market share appear more impressive by comparison. Relying on data for 2012 alone results in a market share that is significantly higher than the 2018 value.<sup>81</sup>

Finally, Commerce noted in the *Preliminary Results* that Interpipe's small share of the U.S. market makes reliance on that variable problematic for this analysis. We noted that by the estimate of the GOU, Interpipe's U.S. market share during the five-year period did not rise above 2.15 percent (Interpipe's own estimates, discussed above, are business-proprietary). In that same context, we noted Commerce currently maintains orders on OCTG from several other countries, including India, Korea, Taiwan, Turkey, and Vietnam. Commerce can also add China to that list.<sup>82</sup> Thus, the United States is a global importer of OCTG. Dumping margins vary as the result of annual administrative reviews, which in turn affect the costs of importing OCTG. Factors within the exporting countries may also change the relative costs of purchasing from one country or another. This further complicates the ability of Commerce to draw meaningful inferences from market share data for this particular product. Interpipe's improved market share in 2018 may simply have resulted from imports from another market becoming relatively more expensive. For example, in April 2018, the cash deposit rate for Nexteel, a Korean exporter of OCTG, increased from 29.76 percent to 75.81 percent.<sup>83</sup> Given Ukraine's small presence in the U.S. market, it would require only a very small gain or loss by another country to cause significant movement in Ukraine's market share.

Therefore, given Interpipe's inability to maintain import volumes and market share throughout most of the five-year period, and the fact that many of the arguments provided to explain away such shortcomings have insufficient factual support, Commerce continues to find that Interpipe's shipments over the five-year period are, at least in part, connected to the discipline imposed by the now-terminated *Suspension Agreement* that was in place during the sunset review period. Thus, while dumping may have been eliminated by the now-terminated *Suspension Agreement*, because import volumes for the subject merchandise have declined significantly from pre-Petition levels, we find that revocation of the *Order* is likely to lead to continuation or recurrence of dumping.

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<sup>81</sup> See Memorandum, "Analysis for Final Results of Sunset Review," dated April 29, 2020.

<sup>82</sup> See *Oil Country Tubular Goods from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 75 FR 28551 (May 21, 2010).

<sup>83</sup> See *Certain Oil Country Tubular Goods From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2015-2016, 83 FR 17146 (April 18, 2018).

## Issue 2: Magnitude of the Margin of Dumping Likely to Prevail

### *Domestic Industry Comments*

The domestic interested parties argued that Commerce correctly determined in the *Preliminary Results* that the estimated weighted-average dumping margin established in the original investigation represents the magnitude of the margin of dumping that is likely to prevail if the *Order* is terminated. They claimed that Interpipe's requests to extend the suspension agreement on OCTG from Ukraine and modify the agreement's underlying NV calculation methodology indicated that Interpipe would not be able to sell OCTG in the U.S. market at prices above their costs and expenses, indicating that the rate from the original investigation is the only rate that accurately accounts for the current behavior of Ukrainian exporters.<sup>84</sup> Accordingly, the domestic interested parties believe that Commerce should determine that the estimated weighted-average dumping margin calculated for the investigation, 7.47 percent, to Interpipe and all other Ukrainian producers and exporters represents the magnitude of the margin of dumping likely to prevail were the *Order* to be revoked.

### *Interpipe Comments*

Interpipe reiterated its argument that a zero percent margin of dumping is likely to prevail if Commerce revokes the *Order*. According to Interpipe, dumping was necessarily eliminated under the terms of the suspension agreement because the company agreed to make all necessary price revisions to completely eliminate sales at less than fair value. Interpipe also argued that it was able to recapture its share of the U.S. OCTG market during the five-year period, which it believes supports the company's claim that it does not need to engage in dumping in order to access the U.S. market.<sup>85</sup>

### *GOU's Comments*

The GOU did not comment on this issue.

### Commerce Analysis:

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 or a suspension agreement in place.<sup>86</sup> In certain circumstances, however, 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

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<sup>84</sup> See Domestic Parties' Rebuttal Brief at 15.

<sup>85</sup> See Interpipe Case Brief at 9.

<sup>86</sup> 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.

increased, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review”).<sup>87</sup>

While we have no reason to believe that the terms of the now-expired *Suspension Agreement* did not eliminate sales at less than normal value of OCTG from Ukraine in the U.S. market during the pendency of the *Suspension Agreement*, as we stated above, “the present absence of dumping is not necessarily indicative of how exporters would behave in the absence of the order or agreement.”<sup>88</sup> Commerce calculated weighted-average dumping margins in the original investigation of 7.47 percent. Therefore, we find that the weighted-average dumping margins determined in the investigation are demonstrative of the behavior of Ukrainian producers or exporters without the discipline of the *Order* in place. The weighted-average dumping margins in the original investigation were also not affected by the zeroing methodology found to be WTO-inconsistent that was subject to the *Final Modification for Reviews*.<sup>89</sup> Thus, Commerce will report the rates determined in the *Amended Final Determination* to the ITC, in accordance with section 752(c)(3) of the Act.

## V. Recommendation

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

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\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

4/29/2020

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Signed by: JEFFREY KESSLER

\_\_\_\_\_  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>87</sup> See SAA at 890-91.

<sup>88</sup> See SAA at 890; see also section 752(c)(4) of the Act.

<sup>89</sup> 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*).