



UNITED STATES DEPARTMENT OF COMMERCE  
International Trade Administration  
Washington, D. C. 20230

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Scope Inquiry  
Public Document  
IA/NME/O4: SMH

August 12, 2009

MEMORANDUM FOR: John M. Andersen  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

THROUGH: Abdelali Elouaradia *AE*  
Office Director  
AD/CVD Operations, Office 4

FROM: Shawn Higgins *SH*  
International Trade Compliance Analyst  
AD/CVD Operations, Office 4

REGARDING: Antidumping and Countervailing Duty Orders on Circular Welded  
Carbon Quality Steel Pipe from the People's Republic of China:  
Final Scope Ruling on Certain Scaffolding Tubes of Constantine  
N. Polites & Co.

### Summary

Pursuant to 19 CFR 351.225(k)(1), based on the analysis below, we recommend that the Department of Commerce (the "Department") determine that the product subject to this scope ruling is within the scope of the antidumping ("AD") and countervailing duty ("CVD") orders on circular welded carbon quality steel pipe ("CWP") from the People's Republic of China ("PRC").<sup>1</sup>

### Background

On February 5, 2009, Constantine N. Polites & Co. ("Polites"), an importer of scaffolding tubes and manufacturer of scaffolding couplers, requested that the Department determine whether certain scaffolding tubes<sup>2</sup> are subject to the antidumping and countervailing duty orders on CWP from the PRC.<sup>3</sup> On February 12, 2009, the Department notified Polites that its request

<sup>1</sup> See Notice of Antidumping Duty Order: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China, 73 FR 42547, 42547-48 (July 22, 2008) ("CWP AD Order"); and Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 73 FR 42545, 42545-46 (July 22, 2008) ("CWP CVD Order") (collectively, "CWP Orders").

<sup>2</sup> See Attachment 1.

<sup>3</sup> See Letter from Polites to Secretary of Commerce, "Request for Scope Ruling" (February 5, 2009) ("Scope Ruling").



was lacking certain information required by the Department in order to make a scope ruling.<sup>4</sup> On February 18, 2009, the Ad Hoc Coalition For Fair Pipe Imports From China and its individual members<sup>5</sup> (collectively, "Petitioners") submitted comments on this scope inquiry.<sup>6</sup> On March 30, 2009, Polites submitted: 1) the information noted as absent by the Department<sup>7</sup> and 2) comments on Petitioners' February 18, 2009, submission.<sup>8</sup>

On May 14, 2009, the Department initiated a formal scope inquiry pursuant to 19 CFR 351.225(e).<sup>9</sup> At that time, the Department also requested that interested parties provide explanations and supporting documentation to define the term "finished scaffolding," as it appears within the scope of the CWP Orders.<sup>10</sup> Additionally, the Department requested that Polites provide further description of the ends of the tubes subject to this scope request.<sup>11</sup> Polites submitted initial comments and rebuttal comments on May 22, 2009,<sup>12</sup> and June 8, 2009,<sup>13</sup> respectively. Petitioners submitted comments on June 1, 2009,<sup>14</sup> and June 12, 2009.<sup>15</sup>

### Description of the Merchandise

Polites describes the product subject to this scope ruling as its "Scaffolding Tube," which is imported in the following eight dimensions (outside diameter x length in feet): 2" x 6', 2" x 8', 2" x 10', 2" x 13', 2.5" x 6', 2.5" x 8', 2.5" x 10', and 2.5" x 13'.<sup>16 17</sup> Polites states that

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Request").

<sup>4</sup> See Letter from Maisha Cryor, Acting Program Manager, AD/CVD Operations, Office 4, to Polites, "Scope Ruling Request: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China" (February 12, 2009).

<sup>5</sup> The Ad Hoc Coalition For Fair Pipe Imports From China is comprised of the following companies: Allied Tube & Conduit, Sharon Tube Company, IPSCO Tubulars, Inc., Western Tube & Conduit Corporation, Northwest Pipe Company, and Wheatland Tube Co.

<sup>6</sup> See Letter from Petitioners to Secretary of Commerce, "Circular Welded Carbon Quality Steel Pipe From China: Request For Scope Ruling On Imports Of CWP For Scaffolding" (February 18, 2009) ("Petitioners' Comments").

<sup>7</sup> See Letter from Polites to Secretary of Commerce, "Response to Letter Dated February 12, 2009" (March 30, 2009) ("Additional Information Submission").

<sup>8</sup> See Letter from Polites to Secretary of Commerce, "Polites Response to Petitioners' Letter of Opposition" (March 30, 2009) ("Polites's Comments").

<sup>9</sup> See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to all interested parties, "Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Initiation of Formal Scope Inquiry" (May 14, 2009) ("Initiation of Formal Scope Inquiry").

<sup>10</sup> Id.

<sup>11</sup> See Initiation of Formal Scope Inquiry at 2.

<sup>12</sup> See Letter from Polites to Secretary of Commerce, "Polites Response to Scope Review Advice of May 14, 2009" (May 22, 2009) ("Polites's Finished Scaffolding Comments").

<sup>13</sup> See Letter from Polites to Secretary of Commerce, "Polites Response to Petitioner's Letter of June 1, 2009" (June 8, 2009) ("Polites's Finished Scaffolding Rebuttal").

<sup>14</sup> See Letter from Petitioners to Secretary of Commerce, "Circular Welded Carbon Quality Steel Pipe From China: Formal Scope Inquiry On Imports of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China Asserted To Be 'Finished Scaffolding' Excluded From The Scope Definitions Of The CWP Orders" (June 1, 2009) ("Petitioners' Finished Scaffolding Comments").

<sup>15</sup> See Letter from Petitioners to Secretary of Commerce, "Circular Welded Carbon Quality Steel Pipe From China: Formal Scope Inquiry On Imports of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China Asserted To Be 'Finished Scaffolding' Excluded From The Scope Definitions Of The CWP Orders" (June 12, 2009) ("Petitioners' Finished Scaffolding Definition").

<sup>16</sup> Polites states that the scaffolding tubes with nominal outside diameters of 2" and 2.5" have actual outside diameters of 1.9" and 2.375", respectively. See Scope Ruling Request at 1.

these scaffolding tubes are produced to ASTM A-500 specifications, hot dip galvanized, and have a wall thickness of less than 4 mm.<sup>18</sup> Also, Polites notes that the steel used in these products is considered carbon quality and consists of, at maximum, 2 percent carbon, 1.8 percent manganese, and 2.25 percent silicon, by weight.<sup>19</sup> Additionally, Polites claims that the tubing ends are plain, round, unthreaded, and saw-cut.<sup>20</sup> Furthermore, Polites states that its scaffolding tubes are classified under HTSUS 7306.30.5032.<sup>21</sup>

### Scope of the Orders

The Department identified the scope of the investigations in its notices of initiation.<sup>22</sup> The scope of the Initiation Notices,<sup>23</sup> like that of the Petition,<sup>24</sup> included language which stated that “pipe used for the production of scaffolding (but not finished scaffolding), and conduit shells (but not finished conduit) are included within the scope...” On November 5, 2007, the Department modified the scope by 1) removing all references to end-use application, 2) including additional physical characteristics to differentiate subject standard and structural pipe from line pipe, and 3) specifying that “finished scaffolding” is excluded from the scope.<sup>25</sup> The Department decided to include “finished scaffolding” in the list of products excluded from the scope in order to provide further clarification of product coverage.<sup>26</sup> Because the Department determined not to include any language relating to end-use application in the scope description, the Department determined not to explicitly state that pipe used for the production of scaffolding and conduit shells was included within the scope.<sup>27</sup> The preliminary determination of sales at less than fair value and the preliminary affirmative countervailing duty determination reflected the aforementioned changes.<sup>28</sup> The preliminary determination of sales at less than fair value also clarified product coverage by including a length criterion for inclusion of imported API specification CWP and eliminated the reference to grade X-42 when referring to API 5L

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<sup>17</sup> See Additional Information Submission at 2.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See Polites’s Finished Scaffolding Comments at 2.

<sup>21</sup> See Additional Information Submission at 2.

<sup>22</sup> See Initiation of Antidumping Duty Investigation: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China, 72 FR 36663 (July 5, 2007); and Notice of Initiation of Countervailing Duty Investigation: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China, 72 FR 36668, 36668-69 (July 5, 2007) (collectively, “Initiation Notices”).

<sup>23</sup> *Id.*

<sup>24</sup> See Letter from Petitioners to Secretary of Commerce, “Petition For The Imposition Of Antidumping And Countervailing Duties Against Circular Welded Carbon Quality Steel Pipe From The People’s Republic of China” (June 7, 2007) (“Petition”).

<sup>25</sup> See Memorandum to Stephen J. Clacys, Deputy Assistant Secretary for Import Administration, from Abdelali Elouaradia, AD/CVD Operations, Director, Office 4, regarding “Scope of the Antidumping and Countervailing Duty Investigations of Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Analysis of Comments and Recommendation for Scope of Investigations” (November 5, 2007).

<sup>26</sup> *Id.* at 6.

<sup>27</sup> *Id.*

<sup>28</sup> See Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 2445, 2447 (January 15, 2008) (“AD Prelim Determination”); and Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 72 FR 63875, 63877 (November 13, 2007).

stenciled pipe.<sup>29</sup> These changes were not incorporated into the scope of the countervailing duty investigation until the publication of the final affirmative countervailing duty determination. In the final determination of sales at less than fair value and the final affirmative countervailing duty determination, the Department further clarified product coverage by revising the definition of the term “painted.”<sup>30</sup> There have been no subsequent changes to the scope. The scope description as published in the CWP Orders is as follows:

The scope of this order covers certain welded carbon quality steel pipes and tubes, of circular cross-section, and with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), whether or not stenciled, regardless of wall thickness, surface finish (e.g., black, galvanized, or painted), end finish (e.g., plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (e.g., ASTM, proprietary, or other), generally known as standard pipe and structural pipe (they may also be referred to as circular, structural, or mechanical tubing).

Specifically, the term “carbon quality” includes products in which (a) iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

- (i) 1.80 percent of manganese;
- (ii) 2.25 percent of silicon;
- (iii) 1.00 percent of copper;
- (iv) 0.50 percent of aluminum;
- (v) 1.25 percent of chromium;
- (vi) 0.30 percent of cobalt;
- (vii) 0.40 percent of lead;
- (viii) 1.25 percent of nickel;
- (ix) 0.30 percent of tungsten;
- (x) 0.15 percent of molybdenum;
- (xi) 0.10 percent of niobium;
- (xii) 0.41 percent of titanium;
- (xiii) 0.15 percent of vanadium; or
- (xiv) 0.15 percent of zirconium.

Standard pipe is made primarily to American Society for Testing and Materials (“ASTM”) specifications, but can be made to other specifications. Standard pipe is made primarily to ASTM specifications A-53, A-135, and A-795. Structural pipe is made primarily to ASTM specifications A-252 and A-500. Standard and

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<sup>29</sup> See AD Prelim Determination, 73 FR at 2446-47.

<sup>30</sup> See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China, 73 FR 31970, 31970-71 (June 5, 2008) and accompanying Issues and Decision Memorandum at Comment 1; and Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966, 31966-67 (June 5, 2008), as amended in CWP CVD Order, 73 FR 42545.

structural pipe may also be produced to proprietary specifications rather than to industry specifications. This is often the case, for example, with fence tubing. Pipe multiple-stenciled to a standard and/or structural specification and to any other specification, such as the American Petroleum Institute (“API”) API-5L specification, is also covered by the scope of this investigation when it meets the physical description set forth above and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish. (The term “painted” does not include coatings to inhibit rust in transit, such as varnish, but includes coatings such as polyester.)

The scope of this investigation does not include: (a) pipe suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) mechanical tubing, whether or not cold-drawn; (c) finished electrical conduit; (d) finished scaffolding; (e) tube and pipe hollows for redrawing; (f) oil country tubular goods produced to API specifications; and (g) line pipe produced to only API specifications.

The pipe products that are the subject of this investigation are currently classifiable in HTSUS statistical reporting numbers 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90, 7306.50.10.00, 7306.50.50.50, 7306.50.50.70, 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. However, the product description, and not the Harmonized Tariff Schedule of the United States (“HTSUS”) classification, is dispositive of whether merchandise imported into the United States falls within the scope of the investigation.<sup>31</sup>

### **Applicable Regulations**

The regulations governing the Department’s AD and CVD scope determinations can be found at 19 CFR 351.225. On matters concerning the scope of an AD and/or CVD order, our initial basis for determining whether a product is included within the scope of an order are the descriptions of the product contained in the Petition, the initial investigation, and the prior determinations of the Secretary (such as prior scope rulings) and the International Trade Commission (“ITC”).<sup>32</sup> Such scope determinations may take place with or without a formal scope inquiry.<sup>33</sup>

Conversely, where the descriptions of the merchandise contained in the Petition, the initial investigation, and the prior determinations of the Secretary and the ITC are not dispositive, the Department will consider the additional factors set forth at 19 CFR 351.225(k)(2). These criteria are as follows: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. These

<sup>31</sup> See CWP AD Order, 73 FR at 42547-48; and CWP CVD Order, 73 FR at 42545-46.

<sup>32</sup> See 19 CFR 351.225(d) and 351.225(k)(1).

<sup>33</sup> See 19 CFR 351.225(d) and (e).

factors are known commonly as the Diversified Products criteria.<sup>34</sup> The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all record evidence before the Department.

For this inquiry, the Department evaluated Polites's scope request in accordance with 19 CFR 351.225(k)(1) because the descriptions of the product contained in the CWP Orders and the prior determinations of the ITC are dispositive with respect to Polites's scaffolding tubes. Therefore, we find it unnecessary to consider the additional factors found in 19 CFR 351.225(k)(2).

## Summary of Arguments

### Polites

Polites requested that the Department issue a scope ruling finding that its scaffolding tubes are not subject to the CWP Orders.<sup>35</sup> Polites argues that its scaffolding tubes are "finished scaffolding" products and, therefore, fall within the scope's exclusion for "finished scaffolding."<sup>36</sup> Polites defines "finished scaffolding" as "{t}ubing or components made of tubing which can be directly used in the erection of scaffolding without any cutting, bending, dedimpling, or welding."<sup>37</sup> Polites believes this exclusion applies to its scaffolding tubes because they 1) are cut, deburred,<sup>38</sup> and have a finish coating of 75 microns of zinc inside and outside,<sup>39</sup> 2) can be used directly in tube and coupler scaffolding without any attached end couplers,<sup>40</sup> 3) do not require further cutting, drilling, bending, welding, or painting prior to use,<sup>41</sup> and 4) are made with specific yield to tensile values that are not available in normal tubing and exceed BS 1139 specifications.<sup>42</sup>

### Petitioners

Petitioners contend that Polites neither distinguishes its scaffolding tubes from the merchandise covered by the scope of the CWP Orders nor points to any physical characteristic that identifies it as "finished scaffolding."<sup>43</sup> Petitioners state that Polites concedes that the scaffolding tubes meet the scope's definition of "carbon quality" and are classified under HTSUS 7306.30.5032, which is one of the indicative HTSUS numbers listed in the scope of the CWP Orders.<sup>44</sup>

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<sup>34</sup> See Diversified Products Corp. v. United States, 6 CIT 155, 162-63 (1983).

<sup>35</sup> See Scope Ruling Request at 1.

<sup>36</sup> Id.

<sup>37</sup> See Polites's Finished Scaffolding Comments at 2.

<sup>38</sup> See Polites's Comments at 2.

<sup>39</sup> See Scope Ruling Request at 1.

<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> See Polites's Comments at 2.

<sup>43</sup> See Petitioners' Comments at 2-3.

<sup>44</sup> Id. at 3.

Furthermore, Petitioners rebut Polites's assertion that its scaffolding tubes fall within the exclusion for "finished scaffolding."<sup>45</sup> First, Petitioners find Polites's definition of "finished scaffolding" objectionable because it includes end-use language and does not set any meaningful parameters for the exclusion.<sup>46</sup> Petitioners propose, as an alternative, defining "finished scaffolding" as "a temporary platform," or series of temporary platforms, "either supported from below or suspended from above, on which workers sit or stand when performing tasks at heights above the ground," that is "completed and ready for use."<sup>47</sup> Second, Petitioners assert that Polites acknowledges that its scaffolding tubes are used in a basic form of scaffolding construction.<sup>48</sup> Third, Petitioners contend that Polites is not an importer of "finished scaffolding" but, rather, is a domestic manufacturer of tube and coupler scaffolding and an importer of scaffolding tubes.<sup>49</sup> Fourth, Petitioners state that the appropriate classification for "finished scaffolding" is under the provision for "equipment for scaffolding," provided for in HTSUS 7308.40.00.<sup>50</sup> Petitioners contend that Polites's scaffolding tubes do not "rise to the necessary level of dedication to be classifiable as equipment for scaffolding."<sup>51</sup> Fifth, Petitioners argue that the Department's decision to remove language from the scope stating "pipe used for the production of scaffolding (but not finished scaffolding), and conduit shells (but not finished conduit) are included within the scope" was not intended to narrow the coverage of the scope of the Petition and Initiation Notices.<sup>52</sup> Finally, Petitioners contend that Polites's scaffolding tubes, as scaffolding components, were included in the ITC's definition of CWP.<sup>53</sup>

### Analysis

As explained above, when determining whether a specific product is within the scope of an antidumping and/or countervailing duty order, the Department reviews the descriptions of the subject merchandise contained in the Petition, the investigation, and the determinations of the Secretary (such as prior scope rulings) and the ITC.<sup>54</sup> In discussing the interpretive process the Department should follow in making scope rulings pursuant to 19 CFR 351.225(k)(1), the Court of Appeals for the Federal Circuit ("CAFC") stated:

The critical question is not whether the petition covered the merchandise or whether it was at some point within the scope of the investigation. The purpose of the petition is to propose an investigation. . . . A purpose of the investigation is to determine what merchandise should be included in the final order. Commerce's final determination reflects the decision that has been made as to which merchandise is within the final scope of the investigation and is subject to

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<sup>45</sup> Id. at 3-4.

<sup>46</sup> See Petitioners' Finished Scaffolding Comments at 8.

<sup>47</sup> See Petitioners' Finished Scaffolding Definition at 2.

<sup>48</sup> See Petitioners' Comments at 2-3.

<sup>49</sup> Id.

<sup>50</sup> See Petitioners' Finished Scaffolding Comments at 5.

<sup>51</sup> Id.

<sup>52</sup> Id. at 7-8.

<sup>53</sup> Id. at 8-9.

<sup>54</sup> See 19 CFR 351.225(k)(1).

the order.... Thus, the question is whether the {final scope of the order} included the subject merchandise.<sup>55</sup>

The CAFC also stated that “a predicate for the interpretative process {in a scope inquiry} is language in the order that is subject to interpretation.”<sup>56</sup> Through these statements, the CAFC found that the appropriate place to begin the analysis as to whether a product is within the scope of an antidumping duty order is to review the scope language of the antidumping duty order itself. Furthermore, the CAFC stated that “{s}cope orders may be interpreted as including subject merchandise only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it.”<sup>57</sup>

In accordance with 19 CFR 351.225(k)(1) and Duferco, the Department first examined the language of the scope of the CWP Orders, including any exclusions, to determine whether Polites’s products are within the scope of the orders. Then, the Department addressed Polites’s arguments pertaining to its products.

In its request for a scope inquiry, Polites states that its scaffolding tubes are imported in the following eight sizes (outside diameter x length in feet): 2” x 6’, 2” x 8’, 2” x 10’, 2” x 13’, 2.5” x 6’, 2.5” x 8’, 2.5” x 10’, and 2.5” x 13’.<sup>58</sup> Polites further states that these scaffolding tubes have wall thicknesses of less than 4 mm.<sup>59</sup> We have determined from record evidence that the aforementioned sizes fall within the outside diameter and wall thickness dimension requirements of the scope of the CWP Orders. The scope of the orders specifically states that the merchandise subject to this proceeding is “certain welded carbon quality steel pipes and tubes, of circular cross-section, and with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm)...regardless of wall thickness.”<sup>60</sup> Additionally, we have determined from record evidence that Polites’s scaffolding tubes are carbon quality tubing. Polites defines the steel used in the scaffolding tubes as carbon quality, as defined in the scope, consisting of, at maximum, 2 percent carbon, 1.8 percent manganese, and 2.25 percent silicon, by weight.<sup>61</sup> Furthermore, record evidence indicates that the scaffolding tubes are classified under HTSUS 7306.30.50.32 – one of the indicative HTSUS item numbers listed in the scope.<sup>62</sup> Polites argues, however, that its scaffolding tubes 1) are made with specific yield to tensile values that are not available in normal tubing, and 2) exceed BS 1139 specifications.<sup>63</sup> The CWP Orders specifically state that the merchandise subject to this proceeding is “certain welded carbon quality steel pipes and tubes...regardless of...or industry specification (e.g., ASTM, proprietary, or other)....” Hence, neither of these arguments above would take Polites’s

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<sup>55</sup> See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1096 (Fed. Cir. 2002) (“Duferco”).

<sup>56</sup> Id. at 1097.

<sup>57</sup> Id. at 1089.

<sup>58</sup> See Additional Information Submission at 2.

<sup>59</sup> Id.

<sup>60</sup> See “Scope of the Orders” sub-section above.

<sup>61</sup> See Additional Information Submission at 2.

<sup>62</sup> Id.

<sup>63</sup> See Polites’s Comments at 2.



merchandise outside the scope. Thus, for the aforementioned reasons, Polites's scaffolding tubes satisfy the size and material requirements established by the scope of the CWP Orders.

The scope of the CWP Orders specifically excludes: "(a) pipe suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) mechanical tubing, whether or not cold-drawn; (c) finished electrical conduit; (d) finished scaffolding; (e) tube and pipe hollows for redrawing; (f) oil country tubular goods produced to API specifications; and (g) line pipe produced to only API specifications."<sup>64</sup> Polites does not argue that exceptions (a), (b), (c), (e), (f), or (g) are applicable to its scaffolding tubes. However, Polites contends that exclusion (d), which is for "finished scaffolding," removes its scaffolding tubes from the scope of the CWP Orders.<sup>65</sup> The Department disagrees with Polites's contention for the reasons set forth below.

With regard to Polites's argument that this exclusion applies to its scaffolding tubes because they are cut, deburred, and have a finish coating of 75 microns of zinc inside and outside, the Department disagrees. The scope of the CWP Orders states that the merchandise subject to this proceeding is "certain welded carbon quality steel pipes and tubes...regardless of...surface finish (e.g., black, galvanized, or painted), end finish (e.g., plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (e.g., ASTM, proprietary, or other)..."<sup>66</sup> Therefore, based on record evidence, we have determined that Polites's scaffolding tubes are within the scope of the orders because cutting, deburring, and galvanizing do not differentiate Polites's scaffolding tubes from the merchandise covered by the scope of the CWP Orders.

With regard to Polites's arguments that this exclusion applies to its scaffolding tubes because they 1) can be used directly in tube and coupler scaffolding without any attached end couplers, and 2) do not require further cutting, drilling, bending, welding, or painting prior to use, the Department disagrees. For the reasons stated below, we have determined that Polites's scaffolding tubes are used for scaffolding components and, therefore, are included in the ITC's description of CWP and the scope of the CWP Orders. The ITC has established that the construction of scaffolding is one possible use of subject CWP by stating that "uses of circular welded pipe include light load-bearing and mechanical applications, such as for...scaffolding components..."<sup>67</sup> By arguing that 1) the only "logical, cost effective use" for its scaffolding tubes is "in the erection of tube and coupler scaffolding,"<sup>68</sup> 2) scaffolding tubes are "basic elements of an erected scaffold" which "require other components to enable them to be connected to each other,"<sup>69</sup> and 3) its scaffolding tubes are "{t}ubing or components made of tubing which can be directly used in the erection of scaffolding..."<sup>70</sup> Polites has acknowledged

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<sup>64</sup> See "Scope of the Orders" sub-section above.

<sup>65</sup> See Scope Ruling Request at 1.

<sup>66</sup> See "Scope of the Orders" sub-section above.

<sup>67</sup> See Circular Welded Carbon-Quality Steel Pipe From China, Investigation Nos. 701-TA-447 and 731-TA-1116 (Final), Pub. No. 4019 (July 2008) at I-13.

<sup>68</sup> See Polites's Comments at 2.

<sup>69</sup> See Polites's Finished Scaffolding Rebuttal at 2.

<sup>70</sup> See Polites's Finished Scaffolding Comments at 2.


on the record that its scaffolding tubes are used for scaffolding components and, therefore, are included in the ITC's description of CWP. Furthermore, because the ITC defined a single like product coextensive with the Department's scope definition, the Department has determined that Polites's scaffolding tubes are within the scope of the CWP Orders. Although the Department solicited and received suggested definitions for the term "finished scaffolding," the Department has determined that it is unnecessary at this time to make a determination regarding this definition, as the preceding analysis demonstrates that the ITC's description encompasses Polites's merchandise.

For the foregoing reasons, the Department determines that Polites's scaffolding tubes are within the scope of the CWP Orders.

**Recommendation**

In accordance with 19 CFR 351.225(k)(1), based upon the foregoing analysis, we have determined that Polites's scaffolding tubes are within the scope of the CWP Orders because Polites's scaffolding tubing meets the physical description of merchandise covered by the CWP Orders and does not otherwise meet any of the exclusionary language of the scope of the CWP Orders. If you agree, we will send a letter to interested parties enclosing this ruling and will notify U.S. Customs and Border Protection of our determination.

  ✓   Agree                                         Disagree

  
\_\_\_\_\_  
John M. Andersen  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

  8/12/09    
Date

Attachment 1

<b>Product Name</b>	<b>Product Number</b>
Scaffolding Tube	2" x 6' Scaffolding Tube
Scaffolding Tube	2" x 8' Scaffolding Tube
Scaffolding Tube	2" x 10' Scaffolding Tube
Scaffolding Tube	2" x 13' Scaffolding Tube
Scaffolding Tube	2.5" x 6' Scaffolding Tube
Scaffolding Tube	2.5" x 8' Scaffolding Tube
Scaffolding Tube	2.5" x 10' Scaffolding Tube
Scaffolding Tube	2.5" x 13' Scaffolding Tube