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International Trade Administration
Washington, D C 20230

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

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

Howard Smith
Program Manager
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FROM: Melissa Blackledge
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RE: Light-Walled Rectangular Pipe and Tube from the People's
Republic of China: Scope Ruling on "Secure-Weld Plus" Fence
Posts

SUMMARY

On June 19, 2009, MMI Products, Inc. ("MMI"), a Delaware corporation, filed a submission with the Department of Commerce (the "Department") requesting a scope ruling on whether the "Secure-Weld Plus" fence posts that it manufactures in Mexico through its Merchant Metals division are within the scope of the antidumping duty ("AD") order on light-walled rectangular pipe and tube ("LWR") from the People's Republic of China ("PRC") ("Scope Request").

In accordance with 19 C.F.R. 351.225(k)(1), we recommend that the Department determine that the "Secure-Weld Plus" fence posts are within the scope of the AD order on LWR from the PRC.



SCOPE

On August 5, 2008, the Department published in the *Federal Register* an AD order on LWR from the PRC. See *Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 45403 (August 5, 2008) ("*LWR Order*"). The scope of the order is as follows:

The merchandise subject to these orders is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to these orders is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of these orders is dispositive.

BACKGROUND

On June 19, 2009, MMI filed its Scope Request with the Department, requesting that the "Secure-Weld Plus" fence posts that it manufactures through its Merchants Metals division in Mexico be found outside the scope of the *LWR Order*. The "Secure-Weld Plus" fence posts under consideration are manufactured using pipe from the PRC and imported into the United States from Mexico. On July 2, 2009, California Steel and Tube, Hannibal Industries, Southland Tube, and Searing Industries (collectively "Domestic Producers") submitted comments in opposition to MMI's Scope Request.

COMMENTS

MMI argues that it does not market or sell merchandise subject to the *LWR Order*. According to MMI, it manufactures finished fence products from LWR of various dimensions coming from Mexico, the United States, and the PRC (subject merchandise). Specifically, MMI claims that its "Secure Weld Plus" fence posts are not within the scope of the *LWR Order* because its fence posts, although manufactured using welded carbon quality light-walled steel pipe of square cross section having a wall thickness of less than 4mm, are a finished product that is part of a fencing system. MMI asserts that its fence system includes cut-to-length posts, fence panels, installation

hardware, gates, and decorative ornamentation, sold as ready for assembly only with other parts of its fencing system. Further, MMI contends that its fence posts undergo an elaborate five-stage cleaning and coating process in Mexico that removes impurities that could affect the finish. MMI avers that these processes make its fence posts highly resistant to the elements, which limits its distribution and use to only that of a fence product. As a result, claims MMI, merchandise subject to the *LWR Order*, which has not undergone this cleaning and coating process, is not suitable for use as fence posts in its fence system. Moreover, asserts MMI, this cleaning and coating process renders the fence post a unique product not covered by the *LWR Order*. Finally, claims MMI, its fence posts do not compete with LWR subject to the order because they are not interchangeable.

Domestic Producers contest MMI's claim that its fence posts are outside the scope of the *LWR Order* and argue that the Department should find that the description of subject merchandise in the *LWR Order* fits MMI's pipe. Domestic Producers claim that based on the descriptions of the merchandise contained in the petition and the investigation, and MMI's own description of its fence posts (*i.e.*, welded carbon quality light-walled steel pipe of square cross section having a wall thickness of less than 4mm), MMI's fence posts are clearly covered by the scope of the *LWR Order*. Domestic Producers also assert that the fact that MMI's fence posts are coated is irrelevant because there are no exclusions in the scope for LWR that is finished or coated. Further, Domestic Producers contend that although the description of the subject merchandise in the *LWR Order* is dispositive, the HTSUS numbers listed in the scope description are highly probative because MMI's fence posts were imported into the United States under these numbers and the descriptions for these HTSUS numbers are basically coextensive with the scope of the order. Domestic Producers add that MMI's acknowledgement that its fence posts, when made from LWR from the PRC, are subject to antidumping duties when imported into the United States supports finding that these fence posts are covered by the scope. Domestic Producers further argue that MMI's contention that its fence posts are excluded because they are used in a fence system is irrelevant because the scope does not contain any exclusions related to end-use, nor is end-use referred to in the scope or the physical descriptions in the petition and investigation. Finally, according to Domestic Producers, the International Trade Commission ("ITC") noted in its preliminary affirmative injury determination regarding LWR that LWR was often used in producing fencing.¹

LEGAL FRAMEWORK AND ANALYSIS

The Department examines scope requests in accordance with its regulations at 19 C.F.R. 351.225. Under 19 C.F.R. 351.225, the Department first examines the description of the merchandise contained in the petition, the investigation, the determinations of the Secretary (including prior scope determinations) and the ITC. *See* 19 C.F.R. 351.225(k)(1). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the merchandise is covered by the order. *See* 19 C.F.R. 351.225(d). Where the descriptions of the merchandise are not dispositive, the Department will consider additional factors provided under 19 C.F.R. 351.225(k)(2). The determination as to which analytical framework is most appropriate in any given scope inquiry is

¹ *Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey*. Inv. Nos. 701-TA-449 and 731-TA-1118-1121 ("Preliminary Determination"), Pub. 3941 (August 2007) at 5.

made on a case-by-case basis after consideration of all evidence before the Department.

In the instant case, the Department has evaluated MMI's Scope Request in accordance with 19 C.F.R. 351.225(k)(1), because a comparison of the descriptions of MMI's "Secure-Weld Plus" fence posts with the description of the merchandise contained in the Petition,² the investigation, and the ITC's determination, demonstrates that MMI's "Secure-Weld Plus" fence posts are covered by the *LWR Order*. MMI acknowledges that the physical characteristics of the "Secure-Weld Plus" fence posts (*i.e.*, "welded carbon quality light walled steel pipe of square cross section having a wall thickness of less than 4 mm") are the same as the physical characteristics of subject merchandise defined in the *LWR Order*. Moreover, although U.S. Customs and Border Protection classifications are not binding on the Department in its scope determinations, MMI acknowledges that the "Secure-Weld Plus" fence posts are classifiable under the HTSUS subheadings included in the scope language of the *LWR Order*.

The Department also finds that MMI's arguments regarding the finishing or coating of the fence posts, the limited end-use of the posts, and whether the fence posts compete with raw steel pipe, are irrelevant. Significantly, the scope of the *LWR Order* is not limited by any exclusions based on production processes, coating, or end-use. Moreover, MMI's argument that its fence posts are outside the scope because they can only be used as fence posts is inapposite given that the Petition notes that LWR is used in a variety of applications, with its principal use being among other things *fencing* (emphasis added),³ and the ITC noted in its *Preliminary Determination* that the main uses for LWR include ornamental *fencing* (emphasis added). Additionally, with regard to MMI's argument that its fence posts are outside the scope because they are treated with a corrosion resistant coating and an exterior powder finish, first as indicated above, there are no exclusions in the scope for coated LWR, and second, the ITC noted that one of the two types of LWR is corrosion resistant LWR, which is coated with corrosion resistant metals, and can also be painted, and varnished or coated with plastics and other non-metallic substances in addition to the metallic coating. See *Preliminary Determination* at I-7. Finally, with regard to MMI's argument that its fence posts are outside the scope because they do not compete with raw steel pipe and cannot be substituted for raw steel pipe, we note that such factors need not be considered in our analysis under 19 C.F.R. 351.225(k)(1) since a ruling can be made in this case based on the description of the fence posts in the application and the description of the subject merchandise in the Petition, the investigation, and the ITC's determination. For these reasons, we recommend finding that the "Secure-Weld Plus" fence posts are within the scope of the *LWR Order*.

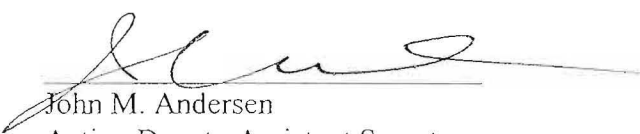
² See Antidumping Duty Petition on Light-Walled Rectangular Pipe and Tube from Korea, Mexico, the People's Republic of China, and Turkey (June 27, 2007) ("Petition").

³ See Petition at 5.

RECOMMENDATION

Based on the above analysis, we recommend that the Department determine that the "Secure-Weld Plus" fence posts are within the scope of the *LWR Order*.

Agree _____ Disagree _____


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

7/28/04
Date _____