



A-570-910
C-570-911
Scope Inquiry
Public Document
IA/NME/O4: MC

July 21, 2009

FOR PUBLIC FILE

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

THROUGH: Abdelali Elouaradia *ADP AE*
Office Director
Import Administration, Office 4

FROM: Maisha Cryor *MC*
Import Compliance Specialist
Import Administration, 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 Imports of CWP by Tubos California, Inc.

Summary

Based on the analysis below, we recommend finding that the products subject to the scope ruling are not excluded from the scope of the antidumping and countervailing duty orders on circular welded carbon quality steel pipe ("CWP") from the People's Republic of China (the "PRC"). See Notice of Antidumping Duty Order: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China, 73 FR 42547, 42548 (July 22, 2008); 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, 42547 (July 22, 2008) (collectively, "CWP Orders").

Background

On May 27, 2009, Tubos California, Inc. ("Tubos"), an importer of CWP, requested that the Department of Commerce (the "Department") determine whether its products that are engineered and fabricated from steel pipes for use in water delivery systems, water and sewer purification systems and/or water filtration systems are subject to the CWP Orders.¹ On June

¹ See Letter from Tubos to Secretary of Commerce, "Request for Scope Ruling" (May 27, 2009) ("Scope Ruling Request") at 2. The Department notes that although the header of the Scope Ruling Request referenced only the antidumping case number, the content of Tubos' request demonstrates that the request also concerns the countervailing duty order ("customs applies the countervailing duties . . . against [Tubos'] products.") See *id.* The header of Petitioners' Comments referenced both the antidumping and countervailing duty orders. See Letter



23, 2009, the Ad Hoc Coalition For Fair Pipe Imports From China and its individual members² (collectively, "Petitioners") submitted comments on this scope inquiry.³

Description of Merchandise

Tubos describes the products subject to the scope ruling as products engineered and fabricated from steel pipes that are custom built for use in water delivery systems, water and sewer purification systems and/or water filtration systems. See Scope Ruling Request at 2. Tubos further describes that these products consist of "CWP (typically ASTM A-53) which may come from Mexico, China or the USA, and steel fittings, e.g. elbows, connections, etc, welding materials, steel pipe of various diameters to be attached to the part, and tape, coatings and gunite (a light weight cement)...."⁴

Arguments Raised by the Parties

Tubos

Tubos requests that the Department issue a scope ruling finding that its products "that are engineered and fabricated from steel pipes for use in water delivery systems, water and sewer purification systems and/or water filtration systems" (water system components) are not subject to the CWP Orders.⁵ Tubos states that these "components include, CWP (typically ASTM A-53) which may come from Mexico, China or the USA, and steel fittings, e.g. elbows, connections, etc, welding materials, steel pipe of various diameters to be attached to the part, and tape, coatings and gunite (a light weight cement)...."⁶ However, Tubos argues that because the CWP used in these water system components "has been cut, capped, jointed with other pipe, or pipes, welded and permanently fitted with elbows and connections, and coated with paint, tape and/or gunite, etc.,...and made to be assembled on site as part of the water delivery/filtration system," the pipe should be excluded from the CWP Orders.⁷ Moreover, Tubos asserts that because the CWP used in the fabrication of its water system components is no longer a simple circular cross section and includes "weldments," the CWP it imports from the PRC should be excluded from the scope of the CWP Orders.⁸ Further, Tubos contends that although the CWP utilized in the fabrication of its water system components may be ASTM certified, the

from Petitioners to Secretary of Commerce, "Circular Welded Carbon Quality Steel Pipe From China: Request of Tubos California, Inc. For A Scope Ruling On Imports of ASTM A-53 Pipe For Use in Water Conveyance" (June 23, 2009) ("Petitioners' Comments"). Both the Scope Ruling Request and Petitioners' Comments were served on all parties to both the antidumping and countervailing duty proceedings and, as demonstrated below, the scope of both orders is identical. Accordingly, the Department finds that Tubos' request concerned both the antidumping and countervailing duty orders, thus the Department's determination applies to both orders.

² 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.

³ See Petitioners' Comments.

⁴ See Scope Ruling Request at 3.

⁵ Id. at 2.

⁶ Id. at 3.

⁷ Id.

⁸ Id. at 7.

component itself (which may include elbows, tape, gunite coating, etc.) must be manufactured to the standards of the American Water Works ("AWWA").⁹

Additionally, Tubos notes that the scope of the CWP Orders does not include pipe suitable for use in boilers or superheaters. Tubos argues that similarly, "as with boilers and superheaters, Tubos California products are used in water treatment facilities which require specific engineering standards and these products do not compete with the standard structural pipe covered within the scope of this case."¹⁰ Tubos further contends that its water system components are "often painted with epoxy, polyethylene or primer, and often insulated with gunite (a cement compound) coating which is more than the 'Surface Finish' included within the scope."¹¹

Petitioners

Petitioners contend that Tubos provides no valid basis for excluding the CWP used in the fabrication of its water system components from the scope of the CWP Orders. Petitioners state that the Department should reject the scope ruling requested by Tubos because the CWP used in Tubos' water system components is a specific exemplar of subject merchandise and the use of CWP for water conveyance is a typical use for merchandise subject to the CWP Orders.¹²

Petitioners note that Tubos states that the imported "components include, circular welded carbon quality steel pipe (typically ASTM A-53) which may come from Mexico, China or the USA."¹³ Petitioners assert that the CWP scope definition states that the subject "standard pipe is made primarily to ASTM specifications A-53, A-153 and A-795."¹⁴ Petitioners contend that, on its face, the CWP scope definition encompasses the CWP imported by Tubos.¹⁵

Further, Petitioners are not persuaded by Tubos' argument that because its imports are intended for use in water delivery and treatment systems, the CWP should be excluded from the scope of the CWP Orders. Petitioners note that the scope does not employ end use language to define subject merchandise. Nevertheless, Petitioners assert that the International Trade Commission ("ITC") determination in the underlying investigation states that standard pipe subject to investigation "is ordinarily used for low-pressure conveyance of air, steam, gas, water, oil or other fluids for mechanical applications."¹⁶ Additionally, Petitioners disagree with Tubos' contention that its water system components should be excluded from the scope of the CWP Orders because they not standard or structural pipe but are uniquely fabricated to AWWA standards. Petitioners contend that this argument is insufficient to exclude Tubos merchandise because the CWP scope defines subject CWP as made to "ASTM, proprietary or other"

⁹ Id. at 5.

¹⁰ Id. at 6.

¹¹ Id. at 7-8.

¹² See Petitioners' Comments at 2.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id. at 3.

specifications.¹⁷ Moreover, Petitioners note that the AWWA specification standard is not among the list of excluded pipe in the CWP scope definition.¹⁸

Next, Petitioners disagree with Tubos' assertion that its products are outside of the scope of the CWP Orders because they are "irregular and no longer of a simple circular cross section" and may contain an epoxy, polyethylene or primer surface finish.¹⁹ Petitioners state that the CWP incorporated in Tubos' water system components are insufficiently fabricated to remove them from the scope of the CWP Orders.²⁰ Further, Petitioners assert that the scope covers CWP "regardless of...surface finish..."²¹ Petitioners also contend that the scope definition indicates that the term painted includes coatings such as polyester.²² Furthermore, Petitioners state that while the scope contains a number of exclusions, Tubos can identify no exclusion applicable to its imports.²³ Moreover, Petitioners argue that Tubos' assertion that the components are "built only to AWWA specifications not ASTM specifications" is contradicted by its earlier admission that its components consist of ASTM A-53 pipe.²⁴

Scope of the Orders

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;

¹⁷ Id. at 4.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id. at 5.

²³ Id.

²⁴ Id. at 4.

- (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 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 order 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.²⁵

Legal Framework

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 351.225. On matters concerning the scope of an antidumping order, our initial basis for determining whether a product is included within the scope of an order are the

²⁵ See CWP Orders, 73 FR at 42545-46, 73 FR at 42547-48.

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 ITC.²⁶ Such scope determinations may take place with or without a formal scope inquiry.²⁷

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 factors are known commonly as the Diversified Products criteria.²⁸ 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 Tubos' request in accordance with 19 CFR 351.225(k)(1) and finds that the description of the product contained in the petition, the initial investigation, the determinations by the Secretary (including prior scope determinations) and the ITC are, in fact, dispositive with respect to Tubos' steel pipes. Therefore, we find it unnecessary to consider the additional factors found in 19 CFR 351.225(k)(2).

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.²⁹ 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 the order.... Thus, the question is whether the {final scope of the order} included the subject merchandise.³⁰

²⁶ See 19 CFR 351.225(d) and 19 CFR 351.225 (k)(1).

²⁷ See 19 CFR 351.225(d) and (e).

²⁸ See Diversified Products Corp. v. United States, 6 CIT 155, 162-63 (1983).

²⁹ See 19 CFR 351.225(k)(1).

³⁰ See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1096 (Fed. Cir. 2002) ("Duferco").

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.”³¹ 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.”³²

In accordance with 19 CFR 351.225(k)(1) and Duferco, the Department will first examine the language of the scope of the CWP Orders, including any exclusions, to determine whether Tubos’ products are within the scope of the orders. Next, we will address Tubos’ arguments pertaining to its products.

In its request for a scope inquiry, Tubos states that its water system components are comprised of CWP (typically ASTM A-53), as well as elbows, connections, welding materials, steel pipe, tape, coatings and gunite.³³ Also, Tubos provided documentation to indicate that the diameter of these products is greater than 9.45 mm but not more than 406.4 mm. See Scope Ruling Request at Exhibits 1 and 5. The scope of the orders specifically states, “{t}he 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).”³⁴ Therefore, based on record evidence we have determined that the aforementioned products fall within the outside diameter dimension requirements of the scope of the CWP Orders, and thus fall within the plain language description of the scope. Additionally, we have determined from record evidence, and Tubos’ own statements, that its products incorporate subject CWP.³⁵ Tubos defines the pipe used in its water system components as “circular welded carbon quality steel pipe (typically ASTM A-53).”³⁶ The CWP Orders specifically states, “{t}he merchandise subject to this proceeding is certain welded carbon quality steel pipes and tubes...regardless of...industry specification (e.g., ASTM, proprietary, or other)...” Accordingly, because the scope of the orders specifically states that ASTM A-53 is within the orders and Tubos defined its CWP as being ASTM A-53, we have determined that the CWP incorporated into Tubos’ water system components satisfies the material requirements established by the scope of the CWP Orders.

Next, we will address Tubos’ arguments pertaining to its products. 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

³¹ Id. at 1097.

³² Id. at 1089.

³³ See Scope Ruling Request at 3.

³⁴ See “Scope of the Orders” sub-section above.

³⁵ See Scope Ruling Request at 2-3.

³⁶ See Scope Ruling Request at 3.

API specifications; and (g) line pipe produced to only API specifications.”³⁷ Tubos does not argue that exceptions (b), (c), (d), (e), (f), or (g) are applicable to the CWP used in its water system components. However, Tubos does make several arguments for why its pipes should be excluded from scope coverage, including exception (a).

Tubos argues that because the CWP used in the fabrication of its water system components “has been cut, capped, jointed with other pipe, or pipes, welded and permanently fitted with elbows and connections, and coated with paint, tape and/or gunite, etc.,...and made to be assembled on site as part of the water delivery/filtration system” it should be excluded from the orders.³⁸ We disagree with Tubos’ argument.

With respect to the addition of parts, Tubos asserts that parts added to the CWP, or “weldments,” are more than the “surface finish” included in the scope.³⁹ Based upon this assertion, it appears that Tubos is arguing that these additional parts do not constitute a surface finish, thus the Department must consider the effect of its additional parts in its analysis. There is no exclusionary language in the scope of the orders that indicates that adding parts, e.g., elbows, connectors, etc., to CWP excludes it from the orders. Moreover, the scope of the orders states that CWP which meets a certain outside diameter requirement is included within the scope of the orders regardless of end finish. Additionally, record evidence provided by Tubos indicates that the imported CWP maintains its circular cross section even though other items, e.g., elbows, etc., may be attached to it. See Scope Ruling Request at Exhibits 2-5.

With respect to various coatings, Tubos claims that its products are “often painted with epoxy, polyethylene or primer, and often insulated with gunite (a cement compound) which is more than the “Surface Finish,” included in the scope.”⁴⁰ However, the scope states that the surface finish may be “galvanized or painted,” thus Tubos’ statement that epoxy, polyethylene, and primer are “painted” onto its products demonstrates that these coatings constitute surface finishes contemplated by the scope.⁴¹ The scope expressly states that merchandise is subject to the orders “regardless of . . . surface finish (e.g., black, galvanized, or painted),” thus the application of these surface finishes does not demonstrate that Tubos’ merchandise is outside the scope of the orders.⁴² Moreover, Tubos does not claim that any of these finishes (e.g., epoxy, gunite, etc.) were painted on its products to “inhibit rust in transit,” which is the sole exclusion provided in the scope for coatings that would otherwise constitute a “surface finish.”⁴³

Tubos further argues that although the CWP utilized in the fabrication of its water system components may be ASTM certified, the water system component itself (which may include elbows, tape, gunite coating, etc.) must be manufactured to the standards of the AWWA⁴⁴ and

³⁷ See “Scope of the Orders” sub-section above.

³⁸ Id.

³⁹ Id. at 7-8.

⁴⁰ Id. at 8.

⁴¹ See “Scope of the Orders” sub-section above.

⁴² Id.

⁴³ Id.

⁴⁴ Id. at 5.

that this removes its products from the scope of the CWP Orders. We disagree with Tubos' argument for the following reasons. First, it appears to the Department that Tubos' water component system is merely CWP with parts attached and finishes applied to the body of the CWP. For example, in its description of what comprises its water component systems, Tubos states that these systems "include, circular welded carbon quality steel pipe (typically ASTM A-53) which may come from Mexico, China or the USA, and steel fittings, e.g. elbows, connections, etc..., welding materials, steel pipe of various diameters to be attached to the part and tape, coatings and gunite (a light weight cement) for use as required by the specifications."⁴⁵ Based upon this description, the water component systems that it imports (i.e., ASTM A-53) are simply CWP with parts and finishes that do not remove it from the scope of the orders. The CWP Orders covers not only certain ASTM specifications, including A-53, but also includes CWP produced to "other specifications or proprietary specifications," i.e., AWWA specifications.⁴⁶ Thus, the fact that Tubos' water system components are made to both ASTM and AWWA specifications is not a valid reason to remove the Tubos' products from being within the scope. Moreover, the AWWA specification is not listed among the list of pipes excluded from the CWP scope definition.

Finally, Tubos contends that exclusion (a), which is for "pipe suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn," removes the CWP it imports from the scope of the CWP Orders because boilers and superheaters are similar to products used in water treatment facilities.⁴⁷ The Department disagrees with Tubos' contention. Tubos does not demonstrate that pipe suitable for use in water treatment systems is necessarily also suitable for use in boilers, heaters, etc. Therefore, we have determined that exclusion (a) is not a basis for excluding Tubos' product from the scope of the orders. Moreover, there is no exclusion in the scope of the orders for CWP used in water delivery/treatment systems.

⁴⁵ Id. at 3.


⁴⁶ See "Scope of the Orders" sub-section above.

⁴⁷ See Scope Ruling Request at 6.

Recommendation

In accordance with 19 CFR 351.225(k)(1), based upon the foregoing analysis, we have determined that Tubos' water system components are within the scope of the CWP Orders to the extent that such components incorporate CWP from the PRC. Tubos' water system components meet the physical description of merchandise covered by the CWP Orders and do 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

7/21/09
Date