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Scope Inquiry
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May 3, 2011

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: James C. Doyle
Director, Office 9
Import Administration

SUBJECT: Certain Magnesia Carbon Bricks from Mexico and the People's
Republic of China: Vesuvius USA Corporation Final Scope Ruling

SUMMARY

On November 1, 2010, the Department of Commerce (the "Department") received a submission from Vesuvius USA Corporation ("Vesuvius") requesting a scope determination¹ on whether tap hole sleeve systems are covered by the scope of the antidumping and countervailing duty orders on certain magnesia carbon bricks ("MCBs") from the People's Republic of China ("PRC").² Between November 30, 2010, and December 8, 2010, we received comments from interested parties. In accordance with section 351.225 (k)(2) of the Department's regulations, on January 26, 2011, we initiated a formal scope inquiry, and requested (and received) comments from interested parties.

After further consideration of the parties' submissions and the record evidence before us, we have determined that a (k)(2) analysis is not necessary for our determination. Therefore, in accordance with section 351.225(k)(1) of the Department's regulations, we recommend the Department determine that Vesuvius' tap hole sleeve systems are not covered by the scope of the *Orders*.

BACKGROUND

As noted above, Vesuvius submitted requests seeking a determination that its tap hole sleeve systems are not covered by the scope of the *Orders*. Vesuvius notes that tap hole sleeve systems,

¹ See "Antidumping and Countervailing Duty Orders on Certain Magnesia Carbon Bricks from the People's Republic of China: Request for a Scope Ruling," dated November 1, 2010. Vesuvius filed this request on the record of the Mexican case on December 16, 2010.

² See *Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Antidumping Duty Orders*, 75 FR 57257 (September 20, 2010); see also *Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Order*, 75 FR 57442 (September 21, 2010). We hereafter refer to these as the "*Orders*."



or tap hole sleeve assemblies, are cylindrical tubes that protrude from the side, or bottom, of basic oxygen furnaces (“BOF”) and electric-arc furnaces (“EAF”) through which molten steel is poured from the furnace into a ladle.³ Vesuvius states that its tap hole sleeve systems are sold and entered as an assembly, or kit for assembly by the customer, composed of the following components: (a) the tap hole sleeve unit, which may be one piece or segmented; (b) tap hole surround blocks; and (c) tap hole end blocks.⁴ Pursuant to the requirements of section 351.225 of the Department’s regulations, Vesuvius provided illustrations and a detailed description of tap hole sleeve systems, and why it believed they are not covered by the scope of the *Orders*.

SCOPE OF THE *ORDERS*

The scope of the orders includes certain chemically-bonded (resin or pitch), magnesia carbon bricks with a magnesia component of at least 70 percent magnesia (“MgO”) by weight, regardless of the source of raw materials for the MgO, with carbon levels ranging from trace amounts to 30 percent by weight, regardless of enhancements (for example, magnesia carbon bricks can be enhanced with coating, grinding, tar impregnation or coking, high temperature heat treatments, anti-slip treatments or metal casing) and regardless of whether or not antioxidants are present (for example, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides). Certain magnesia carbon bricks that are the subject of these orders are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000 and 6815.99.4000 of the Harmonized Tariff Schedule of the United States (“HTSUS”). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

SUMMARY OF THE COMMENTS RECEIVED

Vesuvius contends that the Department correctly determined that tap hole sleeve systems are non-subject merchandise in the *Final Determinations*.⁵ According to Vesuvius, unlike subject MCBs, which are mass produced for use in constructing linings for steel furnaces or ladles, tap hole sleeve systems are tubular products used to form and surround the tap hole. Vesuvius argues that tap hole sleeve systems cannot be used to build linings for steel furnaces or steel ladles, and are not considered to be interchangeable with MCBs by its customers. As a consequence, Vesuvius requests that the Department find that its tap hole sleeve systems are not covered by scope of the *Orders*.

The Petitioner argues that an exclusion for tap hole sleeve systems would create a loophole that weakens the effectiveness of the *Orders* by allowing importers to avoid duties by improperly entering MCBs as tap hole sleeve systems.⁶ The Petitioner states that the scope does not define

³ See, e.g., Vesuvius’ request at 2 and Exhibit 1; Vesuvius’ February 11, 2011 submission at 2.

⁴ *Id.*

⁵ See *Certain Magnesia Carbon Bricks from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 75 FR 45097 (August 2, 2010), and accompanying Issues and Decision Memorandum at Comment 1 (“*Mexican Final Determination*”); *Certain Magnesia Carbon Bricks from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 75 FR 45468 (August 2, 2010), and accompanying Issues and Decision Memorandum at Comment 5 (“*PRC AD Final Determination*”); and *Certain Magnesia Carbon Bricks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010) (“*PRC CVD Final Determination*”). We refer to these collectively as the “*Final Determinations*.”

⁶ See, e.g., Petitioner’s November 30, 2010, submission at 3; Petitioner’s February 11, 2011, submission at 1-2.

what a brick is, and that while some parts of a tap hole sleeve system, such as the tap hole sleeve unit, may be non brick-shaped, other parts, such as surround blocks and end blocks, might be considered to be brick-shaped. The Petitioner contends that, while individual sales of tap hole sleeve systems were disregarded in the investigations, an exclusion cannot be granted based merely on a product's nominal designation or end use, *i.e.*, it may not be obvious to U.S. Customs and Border Protection that a refractory shape with a magnesia carbon composition is properly designated as part of a tap hole sleeve system.

LEGAL FRAMEWORK

The Department examines scope requests in accordance with the Department's scope regulations.⁷ On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the U.S. International Trade Commission ("ITC").⁸ This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether the subject merchandise is covered by the order.⁹

Where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth in section 351.225(k)(2) of the Department's regulations. These criteria are: 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. 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 evidence before the Department.

As noted below, after consideration of all submissions by the parties, and after reconsideration of information on the record, we find the description of the scope unambiguous with regard to the criteria listed in section 351.225 (k)(1) of the Department's regulations. Accordingly, we find that the criteria found in section 351.225 (k)(2) of the Department's regulations are no longer needed to further aid the analysis. Furthermore, it is only when the scope language is ambiguous, and the (k)(1) factors are not decisive that we may rely on the (k)(2) factors in our determination. Therefore, the Department finds it unnecessary to consider the additional factors set forth in section 351.225(k)(2) of the Department's regulations. Consequently, for this inquiry, the Department evaluated Vesuvius' request in accordance with section 351.225(k)(1) of the Department's regulations.

ANALYSIS

We note that on page 2 of its request, Vesuvius states that tap hole sleeve systems are sold and entered as an assembly, or kit for assembly by the customer. *See* Vesuvius' request at 2. However, we also note that on page 4 of its request, Vesuvius states that tap hole sleeve systems are sold as individual refractory components. Thus, while Vesuvius' request is unclear as to

⁷ *See* section 351.225 of the Department's regulations.

⁸ *See* section 351.225(k)(1) of the Department's regulations.

⁹ *See* section 351.225(d) of the Department's regulations.

which products it intends to cover, *i.e.*, the kit or the individual components, the Department considers the request to cover only the tap hole sleeve system assemblies and kits, as a whole. We note that the phrase “the tap hole sleeve system consists of an assembly, or kit for assembly by the customer,” appears in the section of the request titled “Detailed Description of the Product.”

Vesuvius has requested that we find that its tap hole sleeve systems are not covered by scope of the *Orders*. Vesuvius’ tap hole sleeve systems are sold and entered as an assembly, or kit for assembly by the customer, composed of the following components (a) the tap hole sleeve unit, which may be one piece or segmented, (b) tap hole surround blocks and (c) tap hole end blocks.¹⁰

As noted above, the Department’s 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 less than fair value investigation, and the prior determinations of the Secretary (such as prior scope rulings), as well as the determinations of the ITC.¹¹ Here, we note that in the *Final Determinations*, the Department found that magnesia carbon refractory products that are not shaped into bricks, *i.e.*, tap holes, surround blocks, sleeves and sets, as described by the respondent, are non-subject merchandise because they do not meet the physical description of the merchandise covered under the scope.¹²

We note the tap hole sleeve systems described by Vesuvius are identical to the products which we stated in the investigations are non-subject merchandise. Additionally, the Petitioner has not disputed that the tap hole sleeve systems at issue here are indistinguishable from the non-subject tap hole sleeve systems, which the Department previously found not to meet the physical description of the merchandise subject to the *Final Determinations*.¹³ Thus, we find that Vesuvius’ tap hole sleeve systems do not meet the physical description of merchandise subject to the scope of the *Orders*.

RECOMMENDATION

Based upon the foregoing analysis, in accordance with section 351.225(k)(1) of the Department’s regulations and the Department’s *Final Determinations* in the antidumping and countervailing investigations, we recommend finding that tap hole sleeve systems, whether assembled or disassembled, sold and entered as a complete set, are not covered by the scope of the *Orders* covering MCBs from Mexico and the PRC. We also recommend finding that any component

¹⁰ See Vesuvius’ request at 2-4.

¹¹ See sections 351.225(d) and 351.225(k)(1) of the Department’s regulations.

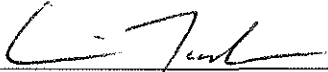
¹² See Comment 1 in the *Mexican Final Determination*, Comment 5 in the *PRC AD Final Determination* and the *PRC CVD Final Determination* at 75 FR 45473.

¹³ See Petitioner’s November 30, 2010, submission; Petitioner’s February 11, 2011, submission.

parts of the tap hole sleeve system, such as end blocks or surround blocks, which meet the physical definition of the scope, if shipped separately, would be covered by the scope.

✓
Agree

Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations