

MAR 4 2004




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

A-533-502
Scope Inquiry
Public Document
G103: KC

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MEMORANDUM FOR: Jeffrey May
Deputy Assistant Secretary
Import Administration

FROM: Laurie Parkhill 
Director
AD/CVD Enforcement III

SUBJECT: Final Scope Ruling on Polyester Powder-Coated Galvanized
Tubing and Pipe – Antidumping Duty Order on Certain Welded
Carbon Steel Standard Pipes and Tubes from India

SUMMARY

On January 23, 2004, the Department of Commerce (the Department) received a request for a scope ruling from Aruvil International, Inc. (Aruvil). In its application, Aruvil requests that the Department determine that the antidumping duty order on certain welded carbon steel standard pipes and tubes (Steel Pipe) from India¹ does not apply to polyester powder-coated galvanized tubing and pipe imported by Aruvil because it is neither the type of merchandise intended to be within the scope of the antidumping duty order nor the type of merchandise for which relief was sought in the original petition. On February 9, 2004, counsel for certain domestic interested parties requested that the Department either deny Aruvil's request or initiate a scope inquiry pursuant to 19 CFR 351.225(e)(2003). On February 10, 2004, Aruvil responded that the Department should either grant its request for a ruling that the merchandise at issue is not within the scope or undertake a scope inquiry pursuant to 19 CFR 351.225(e).

BACKGROUND

In the May 12, 1986, Antidumping Duty Order the Department described the scope as follows:

The merchandise covered by this order is certain welded carbon steel standard pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches, or any wall thickness, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products are commonly referred to

¹ Antidumping Duty Order: Certain Welded Carbon Steel Standard Pipes and Tubes from India, 51 FR 17384 (May 12, 1986) (Antidumping Duty Order).



in the industry as standard pipes or tubes produced to various ASTM specifications, most notably A-120, A-53 or A-135.²

On August 9, 2000, the International Trade Commission (ITC) determined that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³ On August 22, 2000, the Department issued its notice of continuation of the antidumping duty order.⁴ In its continuation notice, the Department stated:

The products covered by this antidumping duty order include circular welded non-alloy steel pipe and tube, of circular cross-section, but not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipe and tube are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipe and tube are intended for the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air-conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells. The scope is not limited to standard pipe and fence tubing or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon-steel pipe and tube within the physical description outlined above are included in the scope of this order, except for line pipe, oil-country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Imports of the products covered by this order are currently classifiable under the following HTSUS subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS item numbers are provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive⁵ (emphasis added).

Aruvil argues that polyester powder-coated galvanized tubing and pipe is a highly specialized product with characteristics beyond those of black, galvanized, and painted pipes and tubes. Specifically, Aruvil argues that the coating of the product, subsequent to the galvanization process, results in a high color and glossy finish with added protection from the elements. This specialized product, Aruvil argues, is not the type of merchandise that was of interest to the petitioners during the initial investigation. To support this assertion, Aruvil refers to the domestic industries' statement that the product "may be supplied with an oil coating (black pipe)

² Id.

³ Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela, 65 FR 48733 (August 9, 2000).

⁴ Continuation of Antidumping Duty Orders: Light-Walled Rectangular Welded Carbon Steel Pipe and Tube from Argentina and Taiwan; Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, Korea, Mexico, and Taiwan; Welded Carbon Steel Pipe and Tube from India, Thailand, and Turkey; and Small Diameter Standard and Rectangular Steel Pipe and Tube from Taiwan, 65 FR 50955 (August 22, 2000) (Notice of Continuation).

⁵ Id. at 50956.

or may be galvanized”⁶ and the domestic industries’ acknowledgment in their February 9, 2004, submission that the product may have been developed after the issuance of the antidumping duty order.

Aruvil also argues that the parenthetical identification of three surface finishes - black, galvanized, painted - in the description of the scope on the Department’s website (scope information by country at <http://www.ia.ita.doc.gov>) is exhaustive and, therefore, excludes from the scope pipe with polyester powder-coating or any other surface finish not listed. Further, Aruvil asserts that, because several manufacturers have trademarked their polyester powder-coated pipes and tubes, coupled with the fact that the pipes and tubes are produced to different ASTM standards, polyester powder-coated pipes and tubes are not classifiable as standard pipes and tubes. Finally, Aruvil argues that cost differences between standard galvanized pipe and polyester powder-coated pipe support the conclusion that the merchandise is a highly specialized product not covered by the antidumping duty order on Steel Pipe from India.

In their February 9, 2004, comments on Aruvil’s scope-ruling request the domestic interested parties ask that the Department not grant the scope exclusion requested by Aruvil. They assert that Aruvil is incorrect in arguing that any fence tubing is outside the scope. Further, they state that “{t}he scope language on its face includes all fence tubing, because it covers all circular product regardless of ‘surface finish, black, galvanized or painted’” (emphasis by domestic parties). In support of this argument the domestic interested parties cite the following scope language from the Final Results of Expedited Sunset Review: Certain Welded Carbon Steel Pipes and Tubes from India, 64 FR 67879 (December 3, 1999) (the Department’s Final Results of Expedited Sunset Review):

The scope is not limited to standard pipe and fence tubing or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon-steel pipes and tubes within the physical description outline above are included in the scope of this order, except for line pipe, oil-country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

PROCEDURE

The regulations regarding scope rulings are provided under 19 CFR 351.225. Subsection 351.225(d) states that, if the Department can determine, based solely upon the application and the descriptions of the merchandise referred to under subsection 351.225(k)(1) whether a product is included within the scope of the order, the Department will issue a final ruling as to whether the product is included within the order. Under subsection 351.225(k)(1), the Department is directed to take into account the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC in its consideration of whether a product is included within the scope of an order. If, after initiation of a scope inquiry (see subsection 351.225(e)), the

⁶ In the Matter of Small Diameter Welded Carbon Steel Standard Pipe and Tube from India, Petition for the Imposition of Antidumping Duties at 5 (July 16, 1985) (Petition).

descriptions identified under subsection 351.225(k)(1) are not dispositive, the Department is directed to consider the following criteria: (1) the physical characteristics of the product; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; (5) the manner in which the product is advertised and displayed. See 19 CFR 351.225(k)(2).

ANALYSIS

A. Product

In Aruvil's application for a scope ruling, it provides the following description of the product it imports:

Product:

- * galvanized welded carbon steel pipe with a polyester powder coating
- * produced to ASTM specification F 1043-00 and F 934-96
- * classified under 7306.30.5032 of the Harmonized Tariff Schedule of the United States (HTSUS)

Dimensions:

- * 1.315" - 4" Actual Outside Diameter
- * various lengths (e.g., 10', 4', 6')

Use of Product:

- * fencing

B. Descriptions of the Merchandise Referred to Under 19 CFR 351.225(k)(1)

In accordance with 19 CFR 351.225(d) and 351.225(k)(1), we analyzed the description of the merchandise in the Petition, the final determination of the ITC,⁷ and the Antidumping Duty Order. On page 5 of the Petition the merchandise is described as follows:

The product covered by this petition is circular welded carbon steel pipes and tubes, .375 inch or more but not over 16 inches in outside diameter, generally known as "standard pipe." This is a general-purpose commodity used in such applications as plumbing pipe, sprinkler systems and fence posts and is commonly referred to in the industry as a standard pipe. It may be supplied with an oil coating (black pipe) or may be galvanized, and is sold in plain ends, threaded, threaded and coupled, or beveled for welding form. (These products are generally produced to ASTM specifications A-120, A-53, or A-135).

⁷ Certain Welded Carbon Steel Pipes and Tubes from India, Taiwan, and Turkey: Determinations of the Commission in the Investigations Nos. 731-TA-271 through 273 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations, USITC Publication 1839 (April 1986) (ITC's Final Report).

Below is the description of the merchandise that the ITC published in the Federal Register when announcing its final determination:⁸

For purposes of these investigations, the term "standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA).

The description of the merchandise the Department published in the Antidumping Duty Order is provided in the "Background" section above.

C. Discussion

The above-referenced descriptions of the merchandise covered by this order unequivocally encompass the dimension (1.315" - 4" Actual O.D.) and composition (i.e., welded carbon steel) of the pipe imported by Aruvil. Further, although the written description of the scope remains dispositive, the product imported by Aruvil is classified under 7306.30.5032 of the HTSUS, which is one of HTSUS numbers listed in the scope of the Department's recent determinations and is provided to U.S. Customs and Border Protection for purposes of identifying merchandise within the scope of the order. See, e.g., the Department's Final Results of Expedited Sunset Review at 64 FR 67879, and the Notice of Continuation at 65 FR 50955, 50956. Moreover, there is no reference to coatings or surface finishes in the scope descriptions published in the Federal Register notices announcing the ITC's final determination and the Department's antidumping duty order. This indicates that coatings/surface finishes do not matter for purposes of determining whether a product falls within the scope of the order.

The description of the merchandise that the ITC published in the Federal Register when announcing its final determination stresses that the product "may be supplied with an oil coating (black pipe) or may be galvanized" (emphasis added). The use of the word "may" in reference to surface finish/coating indicates that pipe with other surface finishes are covered by the order.

We find Aruvil's assertion about the effect of the parenthetical identification of surface finishes in certain iterations of the scope issued after the Antidumping Duty Order to be irrelevant because the language does not exclude other types of coatings and because the other relevant descriptions of the merchandise, in the Petition, the final determination of the ITC, and the Antidumping Duty Order, do not restrict the scope based on surface finish.

With respect to Aruvil's arguments concerning trademarks on polyester-powder coated pipe and the timing of when this type of surface finish was developed, we find the information is not relevant to the analysis we are conducting pursuant to 19 CFR 351.225(d) and 351.225(k)(1).

⁸ Certain Welded Carbon Steel Pipes and Tubes from India, Taiwan, and Turkey: Determinations of the Commission in the Investigations Nos. 731-TA-271 through 273 (Final), 51 FR 16908 (May 7, 1986).

Finally, with respect to Aruvil's arguments about ASTM specifications, the fact that the welded carbon steel pipe that Aruvil imports is produced to ASTM specifications other than those listed in the scope of the antidumping duty order is immaterial; both the description of the merchandise in the Petition and the scope section of the Antidumping Duty Order indicate that the ASTM specifications listed are merely the most notable and do not exclude products made to other ASTM specifications that otherwise fit the physical description of in-scope merchandise.

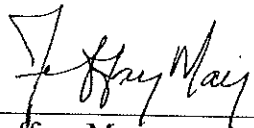
The Petition's reference to surface finish indicates that the domestic interested parties sought relief from imports of circular welded carbon steel pipes and tubes with different surface finishes (protective coatings). Further, in its injury analysis the ITC performed a cumulative analysis of pipes with different surface finishes.¹⁰ Moreover, the descriptions of the merchandise in the Petition, the final determination of the ITC, and the Antidumping Duty Order do not exclude products based on surface finish, and there have not been any clarifications or scope rulings on this order that resulted in the exclusion of merchandise based on the surface finish.

Based on our analysis of the descriptions of the merchandise in the Petition, the final determination of the ITC, and the Antidumping Duty Order, we find that welded carbon steel pipes with different surface finishes (e.g., black, galvanized, painted, polyester-powder coated) are covered by the scope of the antidumping duty order.

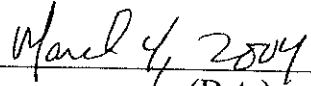
RECOMMENDATION

We recommend that you determine that Aruvil's imports of welded carbon steel pipes that are galvanized and have a polyester powder coating are within the scope of the antidumping duty order on Steel Pipe from India. If you agree, we will send the attached letter to all interested parties.

☒ Agree ☐ Disagree



Jeffrey May
Deputy Assistant Secretary
for Import Administration



(Date)

¹⁰ "We conclude that a cumulative analysis of black and galvanized pipe is appropriate. The only difference between black and galvanized pipe is the fact of galvanization itself." See ITC's Final Report at page 16.



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TO ALL INTERESTED PARTIES

Dear Sir or Madam:

On January 23, 2004, Aruvil International, Inc. requested that the Department of Commerce (the Department) issue a scope ruling finding that its polyester powder-coated galvanized tubing and pipe are excluded from the scope of the antidumping duty order on certain welded carbon steel pipes and tubes (pipes and tubes) from India.

In accordance with 19 CFR 351.225(d) and (k), the Department has determined that Aruvil's polyester powder-coated galvanized tubing and pipe are within the scope of the antidumping duty order on pipes and tubes from India.

We will notify the U.S. Customs Service of this decision. If you have any questions concerning this matter, please contact Kristin Case at (202) 482-3174 or Mark Ross at (202) 482-4794.

Sincerely,

A handwritten signature in black ink, appearing to read "Laurie Parkhill".

Laurie Parkhill
Director, Office 3
AD/CVD Enforcement

Enclosure

