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Scope Inquiry
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MEMORANDUM FOR:

Joseph A. Spetrini
Deputy Assistant Secretary
for Compliance

FROM:

Holly A. Kuga
Office Director *HAK*
Office of Antidumping Compliance

SUBJECT:

Final Scope Ruling--Antidumping Duty Order
on Certain Circular Welded Non-Alloy Steel Pipe from
Mexico--Request by Tubacero International Corporation
for a Ruling on Carbon Steel Pipe

Summary:

On November 29, 1994, Tubacero International Corporation (Tubacero) requested that the Department of Commerce (the Department) issue a scope ruling finding that carbon steel pipe imported by Tubacero is outside the scope of the antidumping order on Certain Circular Welded Non-Alloy Steel Pipe (hereinafter "standard pipe") from Mexico (57 FR 212, November 2, 1992). In accordance with 19 CFR 353.29(c)(1994), we initiated a formal scope inquiry. Further, in accordance with 353.29(i)(1), we recommend that the Department determine that Tubacero's carbon steel pipe is within the scope of the order.

Background:

In its November 29, 1994 submission, Tubacero states that the carbon steel pipe it imported from Mexico was utilized in an extremely heavy load-bearing application, as piling to support a coke refinery. Tubacero contends that such use is inconsistent with the use of standard pipe as outlined in the antidumping order. See Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea, Mexico, and Venezuela, 57 FR 49454, November 2, 1992.

Analysis:

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 353.29. On matters concerning the scope of an antidumping duty order or finding, the normal bases for determining whether a product is included within the scope are the descriptions

of the product contained in the determinations by the Department and the International Trade Commission (ITC), the initial investigation, the petition and, if applicable, prior scope rulings. This determination may take place with or without a formal inquiry (see 19 CFR 353.29 (b) and (i) (1)).

In accordance with 19 CFR 353.29 (b) of the Department's regulations, on June 9, 1995, the Department initiated a formal inquiry to determine whether Tubacero's carbon steel pipe is outside the scope of the order. We requested that interested parties comment on the scope's intent regarding its description of a "light load-bearing" application of standard pipe. Moreover, interested parties were requested to address the four criteria set forth in Diversified Products and 19 CFR 353.29(i)(2). See Diversified Products Corp. Versus United States, 572 F. Supp. 883 (CIT 1983). These criteria include: (i) The physical characteristics of the product; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; and (iv) the channels of trade. See 19 CFR 353.29(i)(2). We received comments from both Tubacero and the petitioners (see Attachment) on June 29, 1995, and rebuttal comments were received from Tubacero and the petitioners on July 12, 1995, and July 5, 1995, respectively.

We have evaluated Tubacero's request in accordance with 19 CFR 353.29 (i)(1) because we decided the product descriptions of the merchandise contained in the determinations of the Department and the ITC, the initial investigation, and the petition are dispositive of the issue and, therefore, an analysis of Diversified Products is not warranted. Documents, or parts thereof, from the underlying investigation or subsequent scope rulings, deemed relevant by the Department to the scope of the outstanding finding, were made part of the record of this determination and are referenced herein. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the record for this scope determination.

The petition, filed on behalf of the domestic standard pipe industry on September 24, 1991, alleged that standard pipe exported from Mexico was being sold at less-than-fair-value (LTFV). Standard pipe is characterized in the petition as "...intended for the low pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may carry liquids at elevated temperatures but may not be subject to the application of external heat. It may also be used for light load-bearing and mechanical applications, such as for fence tubing." See petition of Certain Circular Welded Non-Alloy Steel Pipe from Mexico, September 24, 1991, at 4. The resulting antidumping order expanded on the definition of the merchandise as described in the petition. The scope of the order in its entirety reads as follows:

The products covered by these orders are circular welded non-alloy steel pipes and tubes, of circular cross-section, 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, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas,

and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A-53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled and enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in these orders. Imports of the products covered by these orders are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 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 HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

See Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea, Mexico, and Venezuela, 57 FR 49453, November 2, 1992.

The ITC determination defined the subject merchandise by citing the Department's "Notice of Initiation," 57 FR 181, September 17, 1992. This scope description is virtually identical to the aforementioned scope. See Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes from Brazil, The Republic of Korea, Mexico, Romania, Taiwan, and Venezuela, USITC Publication 2564, October 1992.

Tubacero imported carbon steel pipe sixteen inches in outside diameter with a 3/8 inch wall thickness. The pipe was within the American Petroleum Institute Specification 2B (API 2B). Tubacero does not contest that its carbon steel pipe meets the physical requirements conforming with the American Society of Testing and Materials Designation A-53 (ASTM A-53). However, in its scope ruling request, Tubacero described the use of its carbon steel pipe:

As intended at the time of importation, at the end use construction site, the imported pipe sections were welded into 160 foot lengths. In all 145, 160 foot lengths were made from the imported sections. The pipes were then driven vertically down into a clay swamp. Filled with concrete, they serve as piles for an approximately (one)-ton coke refinery that was built on top of them.

The actual vertical load currently borne by the piles is in excess of 17 million pounds. More specifically, each individual pile bears an actual load of approximately 120,000 pounds, and is capable of bearing 240,000 pounds. In total, the 145 piles constructed from the imported pipes bear an actual load of approximately 17,400,000 pounds, and were designed to a load-bearing capability of approximately 34,800,000 pounds.

See Tubacero's November 29, 1994, Scope Ruling Request, at 3.

In its scope ruling request, Tubacero states, "[t]he exemplar given of a light load-bearing application is pipe used 'for fence tubing.'" It is Tubacero's contention that "[i]n this context, the sole reference to fence tubing is a clarification that a light load-bearing application involves support by each pipe of no more than a few pounds." Tubacero goes on to state that "[t]hough a fence might be a 'light' load, a 17 million pound coke refinery is not." See Tubacero's November 29, 1994, Scope Ruling Request, at 4.

In a later submission, Tubacero expands its reasoning, arguing that the application of "light load-bearing" refers not only to the use of fence tubing, but also to structural pipe tubing "used 'for framing and support members for reconstruction or load-bearing purposes,' and in one of the listed industries." See Tubacero's rebuttal letter of July 12, 1995, at 7. According to Tubacero, the carbon steel pipe for which it seeks a scope ruling is used in an extremely heavy load-bearing application not specifically mentioned in the scope description of the order. Therefore, Tubacero concludes that because its pipe is used for "heavy" as opposed to "light" load-bearing purposes, it is outside the scope of the order.

Petitioners assert that carbon steel pipe used for any load-bearing purpose, is within the scope. Petitioners' comments imply that Tubacero misinterprets the underlying order when it asserts that "light load-bearing" applications are to be distinguished from "heavy load-bearing" applications. Petitioners argue that "...it is unnecessary to elaborate on such a distinction in that the antidumping duty order plainly covers both the specific category of 'light load-bearing' pipe as well as the general category of 'load-bearing' pipe." See petitioners' letter of June 29, 1995, at 5. Petitioners contend that "load-bearing purposes" are not restricted to "light-load bearing" applications, but could refer to any "heavy" load-bearing pipe in the mentioned industries. As a result, petitioners assert, in order for Tubacero's pipe to be considered outside the scope of the order, Tubacero would have to demonstrate that its pipe is neither for a light load-bearing purpose nor for a load-bearing purpose in any of the listed industries or related industries. Further, petitioners claim that "...Tubacero specifically states that the pipes were used in construction as supports." See petitioners' letter of June 29, 1995, at 5.

However, Tubacero disagrees that the application of its carbon steel pipes can be classified as within the construction industry. In its rebuttal letter, Tubacero argues that "coke refining is not part of, or related to, the construction, shipbuilding, trucking, or farm equipment industries." See Tubacero's rebuttal letter of July 12, 1995, at 7 and 8.

Petitioners assert further that:

Not only does the Heavy Load-Bearing Pipe at issue qualify under both physical characteristics and use, but it is also not specifically excluded from the scope of the antidumping duty order due to use. Further, the scope specifically includes HTS 7306.30.35.90, the HTS subheading under which the Heavy Load-Bearing Pipe is imported to the United States.

The scope of the antidumping duty order clearly and unambiguously includes the subject piping to which Tubacero refers. Therefore this Heavy Load-Bearing Pipe is subject to the imposition of antidumping duties. The Department should find, based upon the plain language of the antidumping duty scope description, that this Heavy Load-Bearing Pipe qualifies as the type of pipe subject to the imposition of duties. Therefore there is no need for the Department to further investigate this issue.

See Petitioners' letter of June 29, 1995, at 6.

The Department concludes that Tubacero's pipe is clearly included within the scope of the order. The scope of the order provides that "[a]ll carbon steel pipes within the physical description" outlined are included within the scope of the order, "except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, finished conduit, and standard pipe that is dual or triple certified/stenciled and enters the U.S. as line pipe of a kind used for oil or gas pipelines." No party to this proceeding has disputed that Tubacero's pipe conforms to the physical characteristics of standard pipe as described. In addition, no party claims that Tubacero's merchandise falls under any of the excepted applications.

Tubacero's arguments in favor of exclusion are based on its narrow interpretation of the sentence in the scope section of the order which begins "[s]tandard pipe may also be used for..." However, as indicated above, the dispositive issue in this scope ruling is not whether Tubacero's pipe application falls within the scope of this illustrative sentence. This sentence clearly does not limit the scope of the order to the uses or purposes listed therein, but merely provides examples of possible uses of the subject merchandise. We therefore conclude that Tubacero's carbon steel pipe falls within the scope of the order.

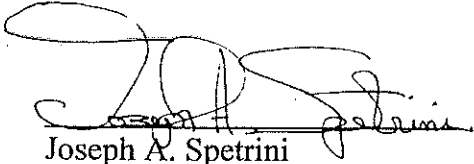
Recommendation:

We recommend that you determine that Tubacero's carbon steel pipe is within the scope of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico.

Agree CS

Disagree _____

If you agree, we will send the attached letter to interested parties and will notify the U. S. Customs Service of our determination.



Joseph A. Spetrini
Deputy Assistant Secretary
for Compliance

Date 3/26/96