

classified under subheadings 7302.10.1020, 7302.10.1040, 7302.10.5000, and 8548.00.0000 of the Harmonized Tariff Schedule (HTS). The HTS numbers are provided for convenience and Customs purposes. The written description of the scope of these reviews remains dispositive.

These changed circumstances administrative reviews cover all manufacturers/exporters of 100 ARA-A steel rail, except light rail, from Canada.

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

#### Final Results of Review; Partial Revocation of Antidumping and Countervailing Duty Orders

The affirmative statement of no interest by petitioners in this case constitutes changed circumstances sufficient to warrant partial revocation of these orders. Therefore, the Department is partially revoking these orders on new steel rail, except light rail, from Canada, with regard to 100ARA-A new steel rail, except light rail, from Canada in accordance with sections 751 (b) and (d) and 782(h) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 353.25(d)(1) and 355.25(d)(1). Although our preliminary results stated that we would revoke the antidumping duty order in part retroactive to August 1, 1994, the Office of Countervailing Compliance has already liquidated entries for calendar year 1994. In addition, the anniversary month for this antidumping case is September. Therefore, this partial revocation, for antidumping purposes, applies to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1994, and, for countervailing duties, all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1995.

The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping or countervailing duties, of all unliquidated entries of 100ARA-A new steel rail from Canada entered, or

withdrawn from warehouse, for consumption on or after September 1, 1994, for antidumping duties and on or after January 1, 1995, for countervailing duties. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of 100ARA-A new steel rail from Canada entered, or withdrawn from warehouse, for consumption on or after September 1, 1994, for antidumping duties and on or after January 1, 1995, for countervailing duties, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) and 355.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping and countervailing duty orders, and notice are in accordance with sections 751 (b) and (d) and 782(h) of the Act and sections 353.22(f), 353.25(d), 355.22(h), and 355.25(d) of the Department's regulations.

Dated: March 14, 1996.

Susan G. Esserman,  
Assistant Secretary for Import Administration.

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[A-351-809, A-580-809, A-201-805, A-307-805]

#### Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube From Brazil, the Republic of Korea, Mexico and Venezuela

**AGENCY:** Import Administration, International Trade Administration Commerce.

**ACTION:** Notice of Final Negative Determination of Scope Inquiry.

**SUMMARY:** On January 13, 1994, we preliminarily determined that (i) pipe certified to American Petroleum Institute (API) 5L line pipe specifications (API 5L line pipe or line pipe) and (ii) pipe certified to both the API 5L line pipe specifications and the less-stringent American Society for Testing and Materials (ASTM) A-53

standard pipe specifications (dual-certified pipe,<sup>1</sup>) when actually used as certain circular welded non-alloy steel pipe (standard pipe), and falling within the physical parameters outlined in the scope of the orders, are within the scope of the antidumping duty orders on standard pipe from Brazil, the Republic of Korea, Mexico and Venezuela. See *Preliminary Affirmative Determination of Scope Inquiry*, 59 FR 1929 (January 13, 1994) (*Preliminary*). We gave interested parties an opportunity to comment.

After a thorough analysis of the comments received from the parties, as well as a review of the record evidence from the less-than-fair-value (LTFV) investigations which gave rise to these antidumping duty orders, we determine that (i) pipe certified to the API 5L line pipe specification, and (ii) pipe certified to both the API 5L line pipe specifications and the less-stringent ASTM A-53 standard pipe specifications which fall within the physical parameters outlined in the scope of the orders and enter as line pipe of a kind used for oil and gas pipelines are outside the scope of the antidumping duty orders on certain welded carbon steel non-alloy pipe from Brazil, Korea, Mexico and Venezuela, irrespective of end use.

**EFFECTIVE DATE:** March 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robert M. James at (202) 482-5222 or Zev Primor at (202) 482-5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

#### SUPPLEMENTARY INFORMATION:

##### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute (the Tariff Act of 1930, as amended (the Tariff Act)) and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

##### Background

On April 22, 1993, Allied Tube & Conduit Corporation, Sawhill Tubular Division, Tex-Tube Division American Tube Company, Century Tube Corporation, Laclede Steel Company, LTV Tubular Products Company, Sharon Tube Company, Western Tube & Conduit Corporation, Wheatland Tube Company, and CSI Tubular Products, Inc., petitioners in these cases, requested that the Department of

<sup>1</sup> This merchandise, sometimes referred to as "dual-stenciled," may also include "multiple-stenciled" pipe.

Commerce (the Department) conduct an antircircumvention inquiry. Petitioners argued pursuant to section 781(c) of the Tariff Act and 19 CFR 353.29(g)(1993), that certain exports from Brazil, Korea and Mexico of API 5L line pipe and dual-certified pipe were circumventing the antidumping duty orders on standard pipe because they were actually used in a standard pipe application. The Department concluded that a scope inquiry pursuant to 19 CFR 353.29(i) was the appropriate avenue for addressing the issues raised by petitioners.

The Department initiated its scope inquiry on June 7, 1993 and granted interested parties the opportunity to comment on whether API 5L line pipe and dual-certified pipe, when used in standard pipe applications, are within the scope of the orders. We received comments from petitioners and six respondents on July 6, 1993 and rebuttal comments on July 19, 1993. Petitioners and five respondents also met separately with the Acting Assistant Secretary for Import Administration to voice their concerns on this issue.

Exports of standard pipe from Venezuela were the subject of a concurrent antidumping investigation. The scope of the resulting order is identical to that of the orders covering Brazil, Korea and Mexico. As a result, we determined that it was appropriate to include imports from Venezuela in the present scope inquiry. See Memorandum from Director, Office of Antidumping Compliance, to Deputy Assistant Secretary for Compliance, October 25, 1993 (hereafter, October 25 Memorandum). In this memorandum we also determined that the record evidence regarding the scope of the orders contained sufficient ambiguity to necessitate further comments by the parties. Accordingly, we asked that interested parties comment on the so-called "Diversified Products" criteria (see below). Petitioners and four respondents filed comments on November 22, 1993 and rebuttals on December 3, 1993.

On January 13, 1994, the Department published in the Federal Register its preliminary affirmative scope determination. We concluded that sufficient ambiguity existed in the record to necessitate consideration of the "Diversified Products" criteria found at 19 CFR 353.29(i)(2). We further determined that the meaning of certain exclusionary language in the scope of the orders was unclear and, further, that petitioners had predicated this exclusionary language upon the "actual end use" of the subject merchandise (as opposed to the "chief" or "primary end

use," as respondents argue). We further determined that the scope language "does not clearly include or exclude line pipe or dual certified pipe . . . which is actually used in standard pipe applications."

*Preliminary* at 1930. As a result of our Diversified Products analysis, we determined that line pipe and dual-certified pipe, when actually used in a standard pipe application and falling within the physical parameters outlined in the orders, are within the scope of these orders. See *Preliminary* at 1933.

Since publication of our preliminary determination we received comments and rebuttal comments from the following parties: petitioners; Mannesmann Pipe & Steel Corporation (Mannesmann); Korea Iron and Steel Association, Dongbu Steel Company, Ltd., Hyundai Steel Pipe Company, Ltd., Korea Steel Pipe Company, Ltd., Pusan Steel Pipe Company, Ltd., and Union Steel Manufacturing Company, Ltd. (collectively, the Korean respondents); Hyundai Pipe Co., Ltd. (Hyundai); Villacero and Tuberia Nacional (Villacero); Hylsa, S.A. de C.V. (Hylsa); and Western American Manufacturing, Inc. (Western). The Governments of Korea and Mexico also submitted comments.

On April 13, 1994, the Department issued a draft end-use certificate and requested comments from the interested parties regarding implementation of end-use certification procedures in the event of a final affirmative determination. Petitioners, respondents, and the Government of Mexico commented on the draft end-use certificate, as did a number of U.S. pipe importers and distributors. In light of our negative final determination, however, the issue of end-use certification is moot, so we have not addressed these comments.

#### Analysis

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 353.29. Our criteria for determining whether a product is included in the scope of an order are set forth in section 353.29(i)(1). These criteria are the descriptions of the merchandise contained in the order, the petition, the initial LTFV investigation, and the determinations of the Department and the International Trade Commission (ITC). If these descriptions are not dispositive of the issue, the Department will further consider the factors provided for under 19 CFR 353.29(i)(2), commonly referred to as the "Diversified Products" criteria (see *Diversified Products Corp. v. United*

*States*, 572 F. Supp. 883 (CIT 1983)). These factors are as follows: (i) the physical characteristics of the product subject to the scope inquiry; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; and (iv) the channels of trade. However, if the record of the Department's and ITC's proceedings is dispositive of the issue, then the Department will issue a final scope determination without reference to the "Diversified Products" criteria.

After careful consideration of the comments by the interested parties, and based upon our review of the record for purposes of this final determination, we have determined that the scope language adopted by the Department in the antidumping duty orders excludes line pipe and dual-certified pipe. This conclusion is supported by the record of the Department's original investigations. We will address each of the relevant aspects of the original investigations in turn, below.<sup>2</sup>

#### The Language of the Petitions Did Not Address Line or Dual-Certified Pipe

The original antidumping duty petitions defined the subject merchandise as "welded non-alloy steel pipes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter regardless of wall thickness, surface finish . . . or end finish . . . These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications." Antidumping Petition, September 24, 1991 at 4. The product descriptions continued, as required by our regulations,<sup>3</sup> with an illustrative listing of typical uses for standard pipe, and observed that the subject merchandise is most commonly produced to the ASTM A-53 specification for standard pipe. The petitions did not mention either line pipe or dual-certified pipe.

In its initiation notice, the Department adopted petitioners' language to define the merchandise covered by the six concurrent investigations and also did not mention either line pipe or dual-certified pipe. See *Initiation of Antidumping Duty Investigations: Circular Welded Non-Alloy Steel Pipe*

<sup>2</sup> Because in this final scope determination we have found the scope language to be dispositive, we have not addressed the "Diversified Products" criteria found in section 353.29(i)(2), nor have we specifically addressed comments by the parties on these criteria.

<sup>3</sup> 19 CFR 353.12(b)(4) directs petitioners to include "[a] detailed description of the merchandise that defines the requested scope of the investigation including technical characteristics and uses of the merchandise, and its current U.S. Tariff classification number." (Emphasis added.)

from Brazil, the Republic of Korea, Mexico, Romania, Taiwan and Venezuela, 56 FR 52528 (October 21, 1991). The petitions and the Department's notice of initiation do not indicate that actual end use was a consideration in crafting the scope of the investigations. To the extent that uses of the subject merchandise are noted, this was in accordance with the Department's regulations. These materials support the conclusion that physical characteristics, not actual end uses, defined the scope of the petitions and the initial investigations. However, the petitions and the initiation notice do not address and, therefore, do not definitively resolve the treatment of line pipe or dual-certified pipe.

#### The Final Scope Language Adopted by the Department Excludes Line and Dual-Certified Pipe

While the record reflects some initial uncertainty at least as to whether multiple-stenciled pipe was covered by the Department's investigations, this uncertainty was resolved early in the proceedings. Prior to submitting their questionnaire responses, respondents requested clarification as to whether triple-certified pipe was included in the scope of the investigations. See Memoranda, Case Analyst to the File, November 15, 1991. In their comments of November 19, 1991, petitioners recognized that an importer could sell dual-certified pipe entered under the HTS line pipe item into either the line pipe or standard pipe market after it entered the United States.<sup>4</sup> Indeed, the purpose of dual-certifying a product is to alert potential consumers of that product's suitability for use in either line pipe or standard pipe applications. Petitioners did not tie treatment of dual-certified pipe to the market in which it was sold. Instead, petitioners stated that "[d]ual or triple certified standard pipe should be covered by these investigations only if they enter the United States under one of the tariff numbers listed in section I.D.3 of the petitions." These tariff numbers, under heading 7306.30 of the HTS, cover standard pipe, and not line or dual-certified pipe. See Petitioners' November 19, 1991 submission at 1. Petitioners further stated that "[a]ny pipe entered under [HTS] item

7306.10.10 [i.e., the item heading for line pipe] would be line pipe outside the scope of the petitions." This statement indicates that in the petitioners' view, the inclusion or exclusion of line pipe is tied to the HTS category.

With regard to dual-certified pipe, petitioners noted that this pipe "generally enters the United States under the separate tariff item H[T]S 7306.10.10 while other standard pipe enters into tariff items H[T]S 7306.30.10 or 7306.30.50." Petitioners explained that:

"General Rules of Interpretation 6 and 3(a) of the [HTS] provide that goods that are classifiable under two or more tariff subheadings are to be classified under the subheading providing the most specific description. Subheading 7306.10 which covers 'line pipe of a kind used for oil and gas pipelines' is more specific than, and therefore takes precedence over, subheading 7306.30, 'other, welded, of circular cross-section, of iron or non-alloy steel'."<sup>5</sup>

Here, petitioners recognized that dual-certified pipe was entering the United States under the HTS item for line pipe because the proper Customs classification for dual-certified pipe is under this item. Taken together, these statements establish that petitioners understood that HTS classification of pipe products was based upon the specificity of the category, not actual use, and that dual-certified pipe would be placed in the line pipe category and, thus, excluded from the order.

Petitioners reiterated their intention to exclude any pipe entered as line pipe in a March 5, 1992 letter to the Department (addressing structural tubing and mechanical tubing). In this submission, petitioners stated that "[t]he scope, as defined by the petition, the Department and the Commission, clearly excludes both imports of line pipe entering the United States in [HTS] category 7306.10 and oil country tubular goods . . .".

Accordingly, the Department did not require respondents to report API 5L line pipe and dual-certified pipe as part of its investigations, and our preliminary and final determinations of sales at less-than-fair-value adopted the exclusionary language suggested by petitioners in defining the scope of the orders:

. . . 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 pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are 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 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 tube fencing 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 outlined above are included within the scope of this investigation, *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 that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.*<sup>6</sup>

In keeping with the petition and petitioners' November 19, 1991 letter, the scope language adopted by the Department does not make actual end use a principal consideration in defining the products covered by the investigations. The first paragraph of the scope language merely describes the physical characteristics of the subject merchandise and offers, as do many antidumping duty orders, an illustrative list of its typical uses. The second paragraph states that "[a]ll carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders . . .". Therefore, the language of the scope of the orders relies on physical characteristics, not on actual or potential end uses.

The scope language goes on to specifically exclude certain types of pipe that fit the physical description, including "line pipe, oil country tubular goods, pipe and tube hollows for redraws, finished scaffolding, and finished conduit." The scope language excludes these separate categories of pipe, based upon industry classifications, without discussion of actual end uses. It follows that line pipe is not covered by the order regardless of how it is finally used.

As to dual-certified pipe, the same analysis of the order's language holds. The scope provides that "[s]tandard pipe that is dual or triple certified/

<sup>6</sup> *Final Determination of Sales at Less Than Fair Value*, 57 FR 42940 (September 17, 1992); see also *Preliminary Determination of Sales at Less Than Fair Value*, 57 FR 17883 (April 28, 1992) (emphasis added).

<sup>4</sup> Petitioners reiterated this knowledge in their April 22, 1993 anticircumvention petitions: "[E]nd users of dual-certified pipe knew that such pipe could be used as either line pipe or standard pipe . . . End users in the plumbing and building trade, for example, purchase it for use as standard pipe while energy companies and utilities purchase it for use as line pipe." Anticircumvention Petitions at 13.

<sup>5</sup> Petitioners' November 19, 1991 Letter at 1 and 2.

stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in these orders." The emphasis on pipe "that enters the U.S. as line pipe," language suggested by petitioners, underscores that the key factors the Department used in determining the scope of the investigations were the physical characteristics and the classification of the merchandise as it passed through U.S. Customs (*i.e.*, "enters the U.S."), and not on its disposition at some later point in the stream of commerce. This conclusion is supported by the fact that the phrase "line pipe of a kind used for oil and gas pipelines" is taken verbatim from HTS item 7306.10.10. The phrase "of a kind used for" is commonly used by Customs to signify the chief, or principal, use of a product and not its actual use. See *Group Italglass U.S.A., Inc. v. United States*, Slip Op. 93-46 at 6 (CIT March 29, 1993) ("The language in heading 7010 'of a kind' preceding 'used for' simply buttresses the interpretative rule for use provisions that it is the use of the class or kind of goods imported that is controlling rather than the use to which the specific imports were put."). Therefore, by the language of the scope, if pipe enters the United States as pipe "of a kind used for oil and gas pipelines" (*i.e.*, is classified by Customs under HTS item 7306.10.10), it is excluded from the scope of the orders.

#### The Determinations of the ITC Did Not Cover Line Pipe

The ITC, in defining the like product for purposes of its injury investigations, followed the language adopted by the Department in the notice of initiation. In its preliminary determination, the ITC first discussed the products "subject to these investigations;" the ITC later defined line pipe and dual-certified pipe under the separate heading "Other Pipe and Tube Products," stating that line pipe is "produced to meet different specifications than 'standard' pipes, and a large percentage of line pipes are made to larger diameters than the pipes and tubes subject to these investigations." Determinations of the Commission (Preliminary), USITC Publication 2454 (November 1991) at A-9. The ITC continued to draw a distinction between line and dual-certified pipe in its final determination and did not include producers of line pipe in its definition of the U.S. industry for purposes of its affirmative injury determination. The ITC did not, therefore, examine the impact of imports of line pipe upon the domestic industry. See Determinations of the Commission (Final), USITC Publication 2564 (October 1992) at I-7

through I-13. Under U.S. law, the Department cannot cover within the scope of an order merchandise which has not first been subject to an affirmative injury determination. See Section 731 of the Tariff Act.

The record with respect to dual-certified pipe is less clear. The ITC's "Producers' Questionnaire" requested data on domestic production of pipes "that were single or multiple stenciled to meet *standard pipe specifications*." ITC Producers' Questionnaire at 14 (original emphasis; submitted as Exhibit 10 to Petitioners' July 6, 1993 Comments). The ITC noted that 15.5 percent of the reported domestic shipments comprised dual-certified pipe and that "the products in question were not sold as standard pipe." USITC Publication 2564 at I-12, note 20 and I-21, note 48. However, the ITC did not indicate whether or not these shipments were included in its injury analysis. Furthermore, as petitioners have acknowledged, the ITC did not include dual-certified pipe in its purchasers' or importers' questionnaires. See Petitioners' February 23, 1994 Comments at 16. Therefore, while the ITC's determinations support the conclusion that line pipe is not covered, the record with respect to the ITC's treatment of dual-certified pipe is inconclusive, but cannot be read to conflict with the Department's scope language excluding dual-certified pipe.

In light of the language of the scope and the underlying record of the investigations, the Department has concluded that an affirmative scope ruling would be contrary to the scope language as written and would represent an impermissible expansion of the scope of the orders. Accordingly, we have concluded that API 5L line pipe and dual-certified pipe do not fall within the scope of the orders.

#### Comments by the Parties

Petitioners maintain that our preliminary affirmative scope determination is correct, is supported by substantial record evidence and is in accordance with law. According to petitioners, the "plain language" of the scope includes *all* pipe meeting the published physical description of the subject merchandise which is used as, or intended for use as, standard pipe "without regard to the tariff number or industry specifications." Petitioners' February 16, 1994 Comments at 2. In light of the Department's preliminary determination that the scope is not dispositive of this issue, petitioners aver that the Department's analysis of the "Diversified Products" criteria leads

properly to the same affirmative determination. *Id.* at 3.

Petitioners support the Department's preliminary conclusion (as outlined in its October 25 Memorandum) that petitioners relied upon HTS item numbers to identify merchandise covered by the investigations because they presumed incorrectly that these tariff classifications were based upon the actual and not the principal end use of the merchandise. Petitioners February 23, 1994 Rebuttal Comments at 9 and 10. Further, petitioners suggest, the Department's statements in the orders' scope that standard pipes "are intended for [specific uses]" and that "line pipe of a kind used for oil and gas pipelines is excluded" constitute an "actual" end-use test and that the merchandise covered by the scope of the orders is, in fact, defined in terms of actual end use. Thus, the Department must conduct an analysis of whether the merchandise is actually used in a standard- or line-pipe application. See, *e.g.*, Petitioners' Rebuttal Comments, February 23, 1994 at 7 through 9, and 12 through 13. Petitioners further argue that the Court of International Trade (CIT), in *Ipsco, Inc. v. United States*, 715 F. Supp. 1104 (CIT 1989) (*Ipsco*), held that the Department's use of the phrase "intended for use" permits an inquiry into how the API 5L and dual-certified pipes at issue here are actually used. *Id.* at 14.

Finally, Petitioners suggest that, because the ITC included in its analysis dual-certified pipe used as standard pipe, a final affirmative determination would be fully consonant with the requirement, pursuant to the statute and the General Agreement on Tariffs and Trade (GATT), that products be subject to an affirmative injury finding prior to the imposition of antidumping duties. *Id.* at 15.

Hylsa, the Korean Respondents, Mannesmann, Villacero and Western agree that the plain language of the scope of these orders is dispositive of this issue in that this language expressly excludes the subject products. Respondents further argue that use, actual or otherwise, played no role in the Department's determination of the scope of the orders. Respondents suggest that the phrase "of a kind used for" is a Customs "term of art" which imposes a chief- or primary-use test, not an actual end-use test. See, *e.g.*, Villacero's Comments, February 11, 1994 at 7; Korean Respondents' Comments, February 16, 1994 at 6 and 7, and 8 through 17, and Hylsa's Comments, February 16, 1994 at 4 through 9. Respondents also find the *Ipsco* decision inapposite here,

contending that the issue before the CIT in *Ipsco* involved an order where “end use was the defining characteristic” of that order’s scope. Hyundai’s Comments, February 15, 1994 at 7 (original emphasis). In contrast, argue respondents, the scope of the standard pipe orders includes “express exclusionary language;” therefore, respondents contend, “the list of end uses is, as the Department itself concedes, ‘illustrative.’” Korean Respondents’ Comments, February 16, 1994 at 25 (original emphasis).

Hylsa, Hyundai, the Korean Respondents, Mannesmann and Villacero also argue that, contrary to the statute and the GATT, inclusion of API 5L line pipe and dual-certified pipe would subject merchandise to antidumping duties without the requisite affirmative determination of material injury to the domestic industry. Citing to these and previous investigations of standard and line pipe, respondents contend that the ITC has consistently identified line pipe as a separate like product. See, e.g., Korean Respondents’ February 16, 1994 Comments at 35 and 36. In these investigations, respondents continue, the ITC limited its injury analysis to the domestic standard pipe industry and, therefore, did not include line or dual-certified pipe in its investigations.

#### The Department’s Response

For the reasons cited in the analysis section above, the Department disagrees with petitioners. After further review of the record evidence, we find that the language of the orders excludes API 5L line pipe and dual-certified pipe irrespective of actual end use. While there may be uncertainty over why these products were excluded from the orders, as suggested in our October 25 Memorandum, the descriptions of the merchandise contained in the petition, the initial investigations, and the determinations of the Department and the ITC, plus the record compiled during this scope inquiry, indicate that it is correct to conclude that API 5L line pipe and dual-certified pipe were excluded from these proceedings from their inception. Further, these documents indicate that at the time the petition was filed and during the investigations, the actual end use of the imported merchandise was not a determinative factor in the formulating the scope description which was, rather, based upon physical characteristics coupled with product classifications

under the Harmonized Tariff Schedule of the United States.<sup>7</sup>

With respect to petitioners’ argument that they misunderstood the underlying principles of the HTS tariff classifications, as stated in the analysis section above, petitioners’ November 19, 1991 letter recognizes that the classification system is based on the specificity of the HTS category, and that dual-certified pipe entered as line pipe could be sold and actually used as either standard or line pipe following importation. Further, petitioners state in their July 6, 1993 scope comments that their position with respect to pipe entered under HTS item 7306.10.10 was based not on the actual use of the pipe but, rather, on petitioners’ lack of interest in pursuing the small quantity of dual-certified pipe entered under HTS item 7306.10.10 which might later be used as standard pipe. Petitioners noted their “belief that little imported dual stenciled pipe entered as line pipe was going into standard pipe applications” and suggested that the quantity of dual-certified pipe actually used in standard pipe applications “would have little or no impact on the operation of a dumping order.” Petitioners July 6, 1993 Scope Comments at 10.<sup>8</sup>

Even if it were the case, as we suggested in our October 25 Memorandum, that petitioners operated under the “incorrect presumption” that HTS tariff numbers were based upon actual end use, and that the subject merchandise would be so classified (see October 25 Memorandum at 5, note 5 and 8), the Department does not now

<sup>7</sup> Petitioners also suggest that the order provides HTS numbers “for convenience and customs purposes” and the written descriptions of the merchandise are dispositive. See Petitioners’ February 23, 1994 Rebuttal Comments at 5 and note 13. While the Department typically includes this disclaimer in its published notices, here, petitioners explicitly based the product coverage upon HTS classifications, and quoted directly from the applicable Customs language to further buttress this emphasis on tariff classifications. The Department’s adoption of petitioners language and reliance upon Customs classifications is, in fact, part of the written description of the scope and is, therefore, controlling.

<sup>8</sup> In their April 22, 1993 request for an anticircumvention inquiry (which gave rise to the instant scope inquiry), petitioners maintained that the scope “specifically excludes” API 5L line and dual-certified pipe. Petitioners quoted the Department’s scope language that “pipe that is dual or triple certified-stenciled that enters the U.S. as line pipe of a kind used for oil and gas pipelines is also not included in this investigation,” and stated that “[l]ine pipe is also specifically excluded” from the scope of the orders. See Petitioners’ April 22, 1993 Anticircumvention Petition at 3 and 25. Petitioners included these statements as part of their explanation of why anticircumvention proceedings, and not a scope inquiry, were necessary to address petitioners’ concerns.

have the discretion to “correct” this misapprehension within the context of a scope inquiry. It is well established that the Department has the authority to clarify the scope of an antidumping duty order. The Department may not, however, modify or expand the scope of an order “in a way contrary to its terms.” See, e.g., *Smith Corona Corp. v. United States*, 915 F.2d 683 (Fed. Cir. 1990); *Alsthom Atlantique v. United States*, 787 F.2d 565 (Fed. Cir. 1986); *Royal Business Machines v. United States*, 669 F.2d 692 (Fed. Cir. 1982).<sup>9</sup> Moreover, regardless of petitioners’ intentions, the fact remains that, as a result of the scope language suggested repeatedly by petitioners and adopted by the Department in its initiation of these investigations, the ITC did not consider whether the domestic industry was injured by imports of line pipe; with respect to dual-certified pipe, the record is unclear.

As to the decision in *Ipsco*, it is inapposite to the instant scope inquiry. In *Oil Country Tubular Goods from Canada* (which gave rise to the *Ipsco* decision) the actual end use of the merchandise was an explicit part of the scope of the order which contains no exclusionary provisions whatever. See *Antidumping Duty Order: Oil Country Tubular Goods (OCTG) from Canada* 51 FR 21782 (June 16, 1986). In contrast to that case, here the scope of the order is driven by physical characteristics and tariff classification of the merchandise, not actual end use, and specifically excludes certain categories of pipe, including line and dual-stenciled pipe, without reference to intended or actual uses.

#### Conclusion

For the reasons cited above, the Department determines that: (i) pipe certified to the API 5L line pipe specification, and (ii) pipe certified to both the API 5L line pipe specifications and the less-stringent ASTM A-53 standard pipe specifications which fall within the physical parameters outlined in the scope of the orders and enter as line pipe of a kind used for oil and gas pipelines are outside the scope of the antidumping duty orders on certain welded carbon steel non-alloy pipe from Brazil, Korea, Mexico and Venezuela, irrespective of end use. We will notify

<sup>9</sup> This does not, however, preclude the Department’s addressing the types of concerns raised here by petitioners at the investigation stage of a proceeding in formulating the scope language. In fact, the Department has addressed these same concerns in several recent pipe investigations. See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 60 FR 31960 (June 19, 1995).

directly the U.S. Customs Service of this determination.

Dated: March 14, 1996.

Susan G. Esserman,

*Assistant Secretary for Import Administration.*

[FR Doc. 96-6862 Filed 3-20-96; 8:45 am]

BILLING CODE 3510-DS-P

[A-533-809]

**Certain Forged Stainless Steel Flanges From India; Antidumping Duty Administrative Review; Time Limits**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Extension of Time Limits.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limits of the preliminary and final results of the new shipper antidumping duty administrative review of certain forged stainless steel flanges from India. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period March 1, 1995 through August 31, 1995.

**EFFECTIVE DATE:** March 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Karen H. Park or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482-5253.

**SUPPLEMENTARY INFORMATION:** Because this review is extraordinarily complicated, the Department is extending the time limits for completion of the preliminary results until July 19, 1996, in accordance with section 751(a)(2)(B)(iv) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. We will issue our final results for this review by December 16, 1996.

These extensions are in accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: March 14, 1996.

Joseph A. Spetrini,

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 96-6861 Filed 3-20-96; 8:45 am]

BILLING CODE 3510-DS-P

[A-428-810]

**High-Tenacity Rayon Filament Yarn From Germany; Antidumping Duty Administrative Review; Time Limits**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Extension of Time Limits.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limits of the preliminary and final results of the third antidumping duty administrative review of high-tenacity rayon filament yarn from Germany. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1994 through May 31, 1995.

**EFFECTIVE DATE:** March 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482-5831/4114.

**SUPPLEMENTARY INFORMATION:** Because it is not practicable to complete this review within the time limits mandated by Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limits for completion of the preliminary results until June 27, 1996. We will issue our final results for this review by September 25, 1996.

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: March 14, 1996.

Joseph A. Spetrini,

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 96-6863 Filed 3-20-96; 8:45 am]

BILLING CODE 3510-DS-P

**Applications for Duty-Free Entry of Scientific Instruments**

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

**Docket Number:** 96-006. **Applicant:** The Scripps Research Institute, 10666 North Torrey Pines Road, La Jolla, CA 92037. **Instrument:** Electron Microscope, Model CM 200. **Manufacturer:** Philips, The Netherlands. **Intended Use:** The instrument will be used for studies of the structure of tobacco, alfalfa, and cucumber mosaic viruses, muscle proteins, nuclear pore complexes, microtubules, CHIP28 water channels, acetylcholine receptors, gap junctions, rotavirus and reovirus, and rice yellow mottle virus. The goals of the investigations are in general to understand the structural basis for how the subcellular organelles and supramolecular assemblies function and to elucidate the role that they play in the life of the cell. In addition, the instrument will be used to provide training in use of the electron microscope as a research tool.

**Application Accepted by Commissioner of Customs:** February 2, 1996.

**Docket Number:** 96-009. **Applicant:** New York University Medical Center, Skirball Institute of Biomolecular Medicine, 550 First Avenue, New York, NY 10016. **Instrument:** Electron Microscope, Model CM 200.

**Manufacturer:** Philips, The Netherlands. **Intended Use:** The instrument will be used for determining the structure of biological macromolecules (i.e., proteins). The objectives of the research are to elucidate the physical and chemical properties of these protein molecules in order to better understand how they accomplish their respective cellular functions. **Application Accepted by Commissioner of Customs:** February 9, 1996.

**Docket Number:** 96-010. **Applicant:** University of New Mexico, 200 Yale Boulevard NE, Albuquerque, NM 87131. **Instrument:** Mass Spectrometer, Model VG Sector 54. **Manufacturer:** Fisons Instruments, United Kingdom. **Intended Use:** The instrument will be used for measurement of <sup>230</sup>Th/<sup>232</sup>Th ratios in igneous rocks and the data then used to understand mantle (deep earth) processes, dating of volcanic events, etc. In addition, the instrument will facilitate measurements by students in courses such as Isotopic Principles of Radiogenic Isotope Geochemistry and Geochronology. **Application Accepted**