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May 30, 2013

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Operations

SUBJECT: Issues and Decision Memorandum for Final Results of
Antidumping Duty Administrative Review: Certain Circular
Welded Non-Alloy Steel Pipe from Mexico

SUMMARY

We have analyzed the case brief and rebuttal brief of interested parties in the antidumping duty administrative review of certain circular welded non-alloy steel pipe from Mexico. As a result of our analysis, we have made no changes from the preliminary results. *See Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2010-11, 77 FR 73617 (December 11, 2012) (Preliminary Results)*. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the discussion of the issues in this review.

BACKGROUND

This review covers five producers. We preliminarily determined that the sole remaining selected mandatory respondent, PYTCO, S.A. de C.V. (PYTCO), had no reviewable sales during the period of review (POR). *See Preliminary Results*. For the remaining four (non-selected) respondents, we determined that each respondent had no reviewable sales of subject merchandise into the United States during the POR. *Id.* Each of these respondents' statements that it had no reviewable sales into the United States during the POR was confirmed by inquiry to Customs and Border Protection (CBP).

In response to our *Preliminary Results*, domestic interested parties Allied Tube and Conduit and TMK IPSCO (collectively Allied/TMK) filed a case brief on January 10, 2013 (Allied/TMK Case Brief). Respondent PYTCO filed its rebuttal brief on January 15, 2013 (PYTCO Rebuttal Brief).



SCOPE OF THE ORDER

The products covered by this order 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, beveled 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 this order, 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 order.

The merchandise covered by the order and subject to this review is currently classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at 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 subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.¹

PERIOD OF REVIEW

This review covers the period November 1, 2010 through October 31, 2011.

DISCUSSION OF THE ISSUES

Issue 1: Whether PYTCO Had Reviewable Sales

Domestic interested parties maintain that the Department ought to reject PYTCO's assertion that it "did not have any exports, sales, or entries of subject merchandise to the United States" during the POR. *See Allied/TMK Case Brief at 2-3; see also* letter from PYTCO to the Secretary of Commerce entitled, "Circular Welded Non-Alloy Steel Pipe from Mexico: Notice of No Exports/Sales," dated April 2, 2012. Allied/TMK notes PYTCO acknowledged that it made numerous pipe sales to the United States during the POR and described them. Allied/TMK argues that, despite PYTCO's assertion that it only shipped mechanical tubing, which is excluded from the order, mechanical tubing is a "specialized, made-to-order product" and that, even if tubing meets a basic mechanical tubing specification such as ASTM A-513, it still qualifies as subject merchandise if it meets standard specifications as opposed to made-to-order

¹ *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non-Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992) (*Antidumping Duty Order*).

specifications. Allied/TMK argues that ASTM A-513 pipe is not, *ipso facto*, outside the scope of the order. Rather, Allied/TMK claims that record evidence demonstrates that some of the pipe that PYTCO exported met the standard ASTM A-53 specification for standard pipe, irrespective of how PYTCO labeled the pipe on the entry documents. *See* Allied/TMK Case Brief at 4-6.

Allied/TMK also claims that the Department ignored record evidence of other POR entries by respondents; Allied/TMK maintains that other information did not confirm the CBP data.² *See* Allied/TMK Case Brief at 6-8. Allied/TMK cites the U.S. Supreme Court's decision in *Allentown Mack Sales & Service, Inc. v. National Labor Relations Board*, 522 U.S. 359, 378-79 (1998), for the proposition that agencies may not ignore certain types of evidence, or adopt irrebuttable presumptions, unless they adopt an explicit, reasonable, and legally valid rule of evidence or counterfactual presumption. Allied/MKT likewise cites the Court of International Trade's decision in *Ad Hoc Shrimp Trade Action Committee v. United States*, Slip Op. 2012-145, 2012 Ct. Int'l Trade LEXIS 146, at **6-7 (Nov. 30, 2012), for the proposition that the Department may presume that certain government agency data are reliable and accurate, but only if there is no evidence in the record that those data are somehow inaccurate. Allied/TMK maintains that "abundant record evidence" shows that PYTCO misclassified POR shipments as involving non-subject merchandise. *Id.*, at 8.

Respondent states the Department ought to continue to uphold the *Preliminary Results* in that neither PYTCO nor its affiliate had reviewable sales, shipments, or entries during the POR. *See* PYTCO Rebuttal Brief at 3-4. PYTCO claims the Department obtained "substantial evidence" upon which to make this determination and properly utilized its discretion to determine that the products reported to the Department as being shipped to the U.S. by PYTCO and its affiliate during the POR did not constitute subject merchandise. *Id.*, at 6-8. PYTCO maintains that the Department's determination was reasonable and supported by the record as a whole.

Department's Position:

After considering all factual information on the record of this review, we continue to find that PYTCO had no reviewable sales of subject merchandise during the POR. The record evidence provided by PYTCO and confirmed by CBP demonstrates that PYTCO's single suspended entry of subject merchandise during the POR was an entry of merchandise that was not sold.³ The

² *See* memorandum from Mark Flessner to the File entitled, "Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Placement on the Record of U.S. Customs and Border Patrol Information for 2010-2011 Period of Review," dated January 27, 2012 (CBP Documents Memorandum).

³ The entry at issue involved a sample of finished electrical metal conduit which had been sent to Underwriters Laboratories (UL) for testing. This entry did not involve a sale of subject merchandise, as no consideration was paid by UL. *See* letter from PYTCO to the Secretary of Commerce entitled, "Circular Welded Non-Alloy Steel Pipe from Mexico: Notice of No Exports/Sales," dated April 2, 2012. *See also*: "Circular Welded Non-Alloy Steel Pipe from Mexico: Response to Department's Questionnaire," dated June 1, 2012; "Circular Welded Non-Alloy Steel Pipe from Mexico: Response to Department's Supplemental Questionnaire," dated July 26, 2012; "Circular Welded Non-Alloy Steel Pipe from Mexico: Response to Department's Second Supplemental Questionnaire," October 11, 2012; "Response of PYTCO, S.A. de C.V. ("PYTCO") to Section A of the Department's Questionnaire," dated October 15, 2012; "Circular Welded Non-Alloy Steel Pipe from Mexico: Response to the Department's First Supplemental Questionnaire (Sections A-C)," dated October 31, 2012.

CBP data upon which the Department relied to make its preliminary determination that respondents did not have reviewable sales during the POR are reliable. *See* CBP Documents Memorandum. The data are reliable because they are compiled by CBP from the actual entries of merchandise subject to the order, based on information required by and provided to the U.S. government authority responsible for permitting goods to enter into the United States, *i.e.*, CBP. As a threshold matter, because Customs officers have a duty to assure the accuracy of information submitted to that agency by penalizing negligent or fraudulent omissions and/or inaccurate submissions, pursuant to 19 CFR 162.77(a), CBP data are presumptively reliable as evidence of respondent-specific POR entry volumes. *Ad Hoc Shrimp Trade Action Comm. v. United States*, 791 F. Supp. 2d 1327, 1332 (Ct. Int'l Trade 2011) (citing *Pakfood Pub. Co. v. United States*, 753 F. Supp. 2d 1334 (Ct. Int'l Trade 2011)); *cf.* *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1037 (Fed. Cir. 1992) (“{A} presumption . . . completely vanishes upon the introduction of evidence sufficient to support a finding of the nonexistence of the presumed fact. In other words, the evidence must be sufficient to put the existence of a presumed fact into genuine dispute.” (Citations omitted)). Here, no record evidence supports a finding that CBP data are not reliable.

Moreover, even a casual review of the *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings which may include subject merchandise (*i.e.*, 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) demonstrates that these are “basket categories” which also include many products that are not subject merchandise. Although domestic interested parties may address issues of alleged fraud with CBP, we have no reason to call into question the data provided by CBP.

The Department finds that the record of this proceeding does not support a finding that any other entry has been incorrectly classified either through fraud or negligence. We therefore find that there is no basis upon which to find that respondent has incorrectly classified its entries or that the CPB data are unreliable.

With regard to Allied/TMK’s assertions regarding the reliability of Customs data, we note that we reviewed these data carefully. We also sent several questionnaires to PYTCO in which we requested from the company information about its POR sales; these elicited extensive sales documentation, production documents, mill test certificates, and industry specifications. Our review of information regarding PYTCO’s sales during the POR showed the products were either manufactured in non-standard pipe sizes or produced without hydrostatic testing. *See* PYTCO’s response to the Department’s second supplemental questionnaire, dated October 11, 2012, at 17. In either instance, the products would not be covered by the scope of the order.

With respect to Allied/TMK’s claims that the presumed reliability of CBP data is being treated as “irrebuttable,” we disagree. Apart from the absence of evidence sufficient to call into question the CBP data, we further examined the issue by sending three separate questionnaires to PYTCO – a fact which demonstrates that our finding here is not simply a matter of presumption. We scrutinized the CBP data thoroughly, and engaged PYTCO in extensive follow-up questioning regarding its sales of pipe products during the POR. The fact remains that after this

inquiry, we continue to find insufficient evidence of any reviewable sales of subject standard pipe by PYTCO or its affiliate during the POR.

We note that PYTCO mischaracterizes the record evidence and our determination in the *Preliminary Results* because the Department did not make the broad conclusion that none of PYTCO's pipe products were in-scope merchandise. Rather, we concluded that record evidence does not support a finding that there are reviewable sales of subject merchandise during this POR beyond the single entry acknowledged by PYTCO.

2. Treating PYTCO and Conduit as a Single Entity and Applying AFA

Allied/TMK maintains that the Department ought to treat PYTCO and another Mexican producer, Conduit, S.A. de C.V. (Conduit), as a single entity. *See* Allied/TMK Case Brief at 9. Allied/TMK also advocates that the Department apply adverse facts available (AFA) to that single entity. *Id.* Allied/TMK claims that, due to PYTCO's lack of cooperation concerning Conduit, the Department lacks information regarding Conduit's possible sales and entries to the United States.

PYTCO responds that the Department should deny Allied/TMK's request to treat PYTCO and Conduit as a single entity for purposes of this administrative review. *See* PYTCO Rebuttal Brief at 9-11. PYTCO states that it does not believe Conduit made entries into the United States of subject merchandise during the POR and thus such an exercise would be unnecessary. *Id.*, at 9. PYTCO maintains that the Department has found a lack of common control between the two companies which would allow for the manipulation of price or production, thereby negating the need to treat the two companies as a single entity for purposes of this administrative review. *Id.*, at 10-11.

Department's Position:

When evaluating whether to "collapse" affiliated companies (based upon potential for manipulation), the Department considers relevant factors, including but not limited to: (1) the level of common ownership; (2) the extent to which managers and board members sit on the board of directors of an affiliated firm; and (3) whether operations are intertwined. 19 C.F.R. §351.401(f)(2). As an initial matter, we determined in the *Preliminary Results* that PYTCO and Conduit were affiliated for a majority of the POR – a point which no party disputed. *See Preliminary Results* at 73618. We did not, as PYTCO contends, make a negative determination with regard to whether there was common control of PYTCO and Conduit during the POR. Rather, we made no determination regarding this question at all because we did not reach the issue in light of the fact that record evidence demonstrates no reviewable sales of subject merchandise for either PYTCO or Conduit. Similarly, with regard to the application of AFA, PYTCO and its affiliates did not impede the Department's conduct of this administrative review. Rather, PYTCO responded to our questionnaires in a timely manner and record evidence supports PYTCO's statements. Thus, we are not applying AFA.

3. Whether To Inform CBP That PYTCO Misclassified Entries During The POR

Allied/TMK urges the Department to inform CBP that PYTCO misclassified entries during the POR:

19 USC 1677f(b)(1)(A)(U) allows the Department to report confidential information to a CBP officer “directly involved in conducting an investigation involving fraud under this subtitle.” Although Domestic Producers do not know if any CBP officers are investigating fraud {...}, they do know that there exist CBP officials directly involved in investigating fraud under this subtitle, based on Operation Piping Hot, which is intended to reduce rampant fraud involving import shipments of pipe from Mexico through Texas. These officials hence are eligible under the statute to receive information of potentially fraudulent activities. Where the Department has evidence of fraud, reporting it increases the reliability and accuracy of CBP data. CBP cannot possibly inspect every shipment that enters the United States, so to ensure the credibility of its regulations it needs to ensure that importers know that any fraud will be detected and penalized. The Department should in this case take the appropriate measures authorized by Congress to ensure that CBP can properly exercise its responsibilities.

See Allied/TMK Case Brief at 10.

PYTCO contends the Department should deny Allied/TMK's request to inform CBP that PYTCO mischaracterized entries in the POR. *See* PYTCO Rebuttal Brief at 11. PYTCO states the evidence on the record clearly indicates that the single entry collected by CBP data that was not originally identified by PYTCO had been mischaracterized. PYTCO further claims that the Department has determined that PYTCO has made no other shipments of subject merchandise to the U.S. during the POR (whether for sale or testing). PYTCO contends the Department possesses no evidence of fraud on the part of PYTCO which would need to be reported to CBP. *Id.*

Department's Position:

As stated above, we continue to find there were no reviewable sales by PYTCO on the record of this review. However, we disagree with respondents' characterization of our findings. We did *not* determine that PYTCO had not shipped any subject merchandise to the United States during the POR; rather, we concluded that the record evidence does not support a finding that there were reviewable sales. With regard to any mischaracterization of entries of standard pipe during the POR, any such activity and determinations about its legality fall under CBP's authority, although the Department, as a normal function, cooperates with CBP. The Department continues to work with CBP on the proper enforcement of the scopes of orders that cover this type of pipe and tubing, including the proper classifications of standard, mechanical and structural tubing; and this inter-agency coordination with CBP will continue. Allied/TMK's arguments notwithstanding, we continue to determine that the evidence on the record does not conclusively demonstrate that PYTCO or its affiliates had reviewable sales during the 2010-2011 POR.

4. Whether To Order Liquidation of Any Entries Produced and/or Exported By Respondents At The “All Others” Rate

Allied/TMK maintains that the Department should direct CBP to liquidate any entries produced and/or exported by PYTCO and its affiliates at the “all others” rate. *See* Allied/TMK Case Brief at 10-11. Allied/TMK states that the *Preliminary Results* indicated that, if the Department found that no entries of subject merchandise had occurred during the POR, it would instruct CBP to liquidate “any existing entries of merchandise produced by the respondents, and exported by other parties at the all-others rate” so as to further the goals of the *Assessment Policy Notice* (which relates to situations where respondents stated they had no knowledge of sales by resellers in the United States). *Id.* Allied/TMK reasons that there could be entries of subject merchandise even if respondents accurately denied knowing about them. Allied/TMK therefore wants the Department to direct CBP to liquidate any existing entries of subject merchandise during the POR regardless of who made them at the “all others” rate. Allied/TMK states that, if there were no such entries by PYTCO and its affiliates (as they claim), then this would cause them no injury. If, however, CBP later determines there were entries, then CBP should certainly liquidate such entries at the “all others” rate. Allied/TMK maintains that a CBP investigation into fraud or negligence would use this “all others” rate to calculate any penalty it might impose under 19 U.S.C. § 1592. *Id.*

PYTCO did not respond to this argument.

Department’s Position:

The Department has made no conclusion beyond that stated above, *i.e.*, we have determined that there are no reviewable entries for this POR. Hence, it would not be appropriate for the Department to direct liquidation of “*any existing entries*” of subject merchandise during the POR -- regardless of who made them -- at the “all others” rate. Rather, we will issue liquidation instructions in accordance with our practice and pursuant to our obligations under the statute. We note, however, that neither PYTCO nor its affiliates have been respondents in any previous segment of this proceeding prior to the instant segment; consequently, their rate is *already* the “all others” rate.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final determination of the review in the *Federal Register*.

AGREE DISAGREE

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

May 30, 2013
Date