

RESULTS OF REDETERMINATION PURSUANT TO REMAND
A.L. Patterson, Inc., v. United States
Consol. Court No. 11-00192
(December 29, 2014)

I. Summary

The U.S. Department of Commerce (“Department”) has prepared these results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or “Court”) in *A.L. Patterson, Inc. v. United States*, Court No. 11-00192, (December 29, 2014) (“Remand Order”). That order directed the Department to take action in accordance with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in *A.L. Patterson, Inc., v. United States*, Court No. 13-1526 (CAFC 2014) (“*Patterson CAFC 2014*”), and to find that the engineered steel coil rod (“coil rod”) imported by A.L. Patterson, Inc. (“Patterson”) is outside the scope of the antidumping duty (“AD”) order on certain steel threaded rod (“threaded rod”) from the People’s Republic of China (“PRC”).¹

On January 9, 2015, the Department issued a draft redetermination in which it found, in accordance with the CAFC’s decision in *Patterson CAFC 2014* and the CIT’s Remand Order, that Patterson’s coil rod² was not subject to the AD order on threaded rod from the PRC.³ The CAFC’s decision in *Patterson CAFC 2014* stated that there is insufficient evidence to conclude that coil rod was part of the U.S. International Trade Commission’s (“ITC”) material injury investigation. As such, pursuant to the CAFC’s decision in *Patterson* and the CIT’s Remand

¹ See *Certain Steel Threaded Rod from the People’s Republic of China: Notice of Antidumping Duty Order*, 74 FR 17154 (April 14, 2009) (“*Order*”).

² The product is a high-strength, alloy steel rod, medium-to-high carbon quality steel with a minimum carbon content of 0.4 percent, and a large coil thread rolled onto the full length of the rod. See Letter from A.L. Patterson, to Secretary of Commerce, regarding *Certain Steel Threaded Rod from the People’s Republic of China: Application for a Scope Ruling Excluding Engineered Steel Coil Rod from the Scope of the Antidumping Duty Order* (February 22, 2011) (“*Patterson Request*”) at Appendix C.

³ See Draft Results of Redetermination Pursuant to Court Remand, *Certain Steel Threaded Rod from the People’s Republic of China, A.L. Patterson, Inc. v. United States* (January 9, 2015).

Order, the Department found that it may not impose antidumping duties on Patterson's coil rod.⁴

No party submitted comments on the Department's draft results of redetermination.

Accordingly, the Department continues to find that Patterson's coil rod is not subject to the AD order on certain steel threaded rod from the PRC and will not impose antidumping duties on Patterson's coil rod.

II. Background

In our initial scope ruling, the Department found coil rod imported by Patterson within the scope of the *Order* on threaded rod from the PRC.⁵ In that scope ruling, the Department stated that the description of the product contained in the petition, the initial investigation, and the determinations by the Department (including prior scope determinations) and the ITC were, in fact, dispositive with respect to Patterson's engineered steel coil rod.⁶ Therefore, the Department conducted the scope determination pursuant to 19 CFR 351.225(k)(1). Based on that analysis, as the scope language of the *Order* was clear in its requirement that subject merchandise consist of products with solid, circular cross sections, with threading along greater than 25 percent threading of their total length, and Patterson's coil rod met these specific requirements of the scope of *Order*, the Department found that Patterson's coil rod was within the scope of the *Order*.⁷

Patterson challenged the Department's Final Scope Ruling in the CIT. On August 6, 2012, the CIT remanded the Final Scope Ruling to the Department to reconsider its decision that the engineered steel coil rod imported by Patterson falls within the scope of the *Order*.⁸

⁴ See *Wheatland Tube Co. v. United States*, 161 F. 3d 1365, 1371 (CAFC 1998).

⁵ See *Certain Steel Threaded Rod from the People's Republic of China: A.L. Patterson Final Scope Ruling*, A-570-932 (May 24, 2011) ("Final Scope Ruling"); see also *Order*, 74 FR 17154.

⁶ See Final Scope Ruling at 5.

⁷ *Id.*, at 5-6.

⁸ See *A.L. Patterson, Inc. v. United States*, Court No. 11-00192, Slip Op. 12-103 (August 6, 2012) ("*CIT Remand Order*").

Specifically, the Court held that: 1) the Department's decision that the scope language encompasses Patterson's product is not supported by substantial evidence; (2) if there is no finding of injury or sales at less-than-fair-value ("LTFV") for Patterson's product, the Department's determination is not in accordance with law; and (3) the Department failed to adequately explain the reasons for its determination.⁹ The CIT instructed the Department on remand "to reconsider whether the language of the order includes Patterson's coil rod, following the interpretive procedure established in 19 CFR 351.225(k)(1)."¹⁰

On remand, the Department re-examined the language of the petition, prior scope determinations, and original investigations of the Department and ITC, and the Department continued to find that Patterson's coil rod is within the scope of the *Order*.¹¹ After reviewing the petition, the ITC reports, and the original investigations, the Department found that Patterson's coil rod matched the physical description of the same class or kind of merchandise previously considered by the Department and the ITC based on carbon content, threading along the rod, and circular cross-section.¹² Accordingly, the Department found that Patterson's coil rod was within the scope of the *Order* under an analysis conducted pursuant to 19 CFR 351.225(k)(1).¹³

On May 22, 2013, the CIT sustained the Department's Remand Redetermination.¹⁴ Patterson appealed the CIT's judgment to the CAFC.

On September 22, 2014, the CAFC reversed the CIT's judgment. As detailed below, the CAFC concluded, among other things, that substantial evidence did not support the Department's

⁹ See *CIT Remand Order* at 9-17.

¹⁰ *Id.*, at 18.

¹¹ See Final Results of Redetermination Pursuant to Remand (December 4, 2012) at 14 ("Remand Redetermination").

¹² *Id.*, at 14 and 16-19.

¹³ *Id.*, at 14.

¹⁴ See *A.L. Patterson, Inc. v. United States*, No. 11-00192 (CIT 2013).

determination that the coil rod at issue is in the domestic industry investigated by the ITC during its LTFV investigation.¹⁵ Specifically, the CAFC found that “the record before us shows that the investigations that supported the antidumping order was {sic} not on Patterson’s coil rod but rather other kinds of steel threaded rods.”¹⁶ Therefore, the CAFC concluded that “there is insufficient evidence to conclude that Patterson’s coil rod, a distinctly different product than steel threaded rod, was part of the {ITC}’s material injury investigation,” and as such, found that Patterson’s engineered steel coil rod is not subject to the AD order.¹⁷ On December 29, 2014, the CIT issued an order for the Department to take action on remand in accordance with the CAFC’s decision in *Patterson CAFC 2014* and to find that Patterson’s engineered steel coil rod is outside the scope of the AD order.¹⁸

III. Legal Framework

When a request for a scope ruling is filed, the Department examines the scope language of the order at issue and the description of the product contained in the scope ruling request.¹⁹ Pursuant to the Department’s regulations, the Department may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product.²⁰ If the Department determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order.

Conversely, where the descriptions of the merchandise are not dispositive, the Department will analyze the factors set forth at 19 CFR 351.225(k)(2). These factors are: (i) the

¹⁵ See *Patterson CAFC 2014* at 15.

¹⁶ *Id.*; Cf. *Sango Int’l, L.P. v. United States*, 484 F. 3d 1371, 1380-1 (CAFC 2007).

¹⁷ See *Patterson CAFC 2014* at 15.

¹⁸ See Remand Order.

¹⁹ See *Walgreen Co. v. United States*, 620 F. 3d 1350, 1357 (CAFC 2010).

²⁰ See 19 CFR 351.225(k)(1).

physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

IV. Scope of the Order

The merchandise covered by the order is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold-drawn, cold-rolled, machine straightened, or otherwise cold-finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to the order are non-headed and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.*, galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Included in the scope of the order are steel threaded rod, bar, or studs, in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or

- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.012 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, 7318.15.5090, and 7318.15.2095 of the United States Harmonized Tariff Schedule (“HTSUS”). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Excluded from the scope of the order are: (a) threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total length; and (b) threaded rod, bar, or studs made to American Society for Testing and Materials (“ASTM”) A193 Grade B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, or ASTM A320 Grade L7.

V. Analysis

In *Patterson*, the CAFC cited to 19 CFR 351.225(k)(1), which requires the Department when conducting scope determinations to take into account “{t}he descriptions of the

merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the {ITC}.”²¹ Additionally, the CAFC noted that the Tariff Act of 1930, as amended (“the Act”), “provides a two-step process to address harm to domestic manufacturing from foreign goods sold at an unfair price,” where the Department “determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value,” and the ITC “determines that there is an industry in the United States that is materially injured, threatened by material injury, or whose establishment is materially retarded.”²² According to the CAFC, “antidumping duties may only be imposed pursuant to these investigations” and the determination of what goods constitute “domestic like products” defines the “scope of a domestic industry and, in turn, the scope of the {ITC}’s material injury analysis.”²³

Citing to *Duferco*, the CAFC found that while “review of the petition and the investigation may provide valuable guidance as to the interpretation of the final order... they cannot substitute for language in the order itself.”²⁴ In imposing this rule in *Duferco*, the CAFC noted that this prevented the Department from using the interpretative process to “impermissibly modify the orders to include products that were not within the scope of the original... orders.”²⁵ The CAFC noted that “even when merchandise is facially covered by the literal language of the order, it may still be outside the scope if the order can reasonably be interpreted so as to exclude it.”²⁶ Therefore, the CAFC found that in scope determinations the Department must examine the criteria under 19 CFR 351.225(k)(1), “which by {the} plain language of the

²¹ See *Patterson CAFC 2014* at 8.

²² *Id.*, at 8-9; *United States v. Eurodif S.A.*, 555 U.S. 305, 310-1 (2009).

²³ See *Patterson CAFC 2014* at 9; *Allegheny v. Ludlum Corp. v. United States*, 287 F. 3d 1365, 1368 (CAFC 2002).

²⁴ See *Patterson CAFC 2014* at 9; *Duferco Steel, Inc. v. United States*, 296 F. 3d 1087, 1097 (“*Duferco*”).

²⁵ See *Patterson CAFC 2014* at 9; *Duferco* at 1098.

²⁶ See *Patterson CAFC 2014* at 10; *Mid Continent Nail Corp. v. United States*, 725 F. 3d 1295, 1301 (CAFC) (“*Mid Continent Nail*”).

regulation extends the inquiry beyond the description of the product in the antidumping order.”²⁷ Accordingly, the CAFC determined that the “question of whether Patterson’s coil rod meets the order’s physical specifications only begins the inquiry” because the Department must determine, as supported by substantial evidence, whether “coil rod was the kind of steel threaded rod sold in the domestic industry that the {ITC} investigated and found injury.”²⁸

In examining the Remand Redetermination, the CAFC found that the Department’s analysis was still limited to the physical description of the merchandise and did not consider the 19 CFR 351.225(k)(1) criteria as a whole, including evidence that coil rod was excluded from the Department’s and ITC’s investigations.²⁹ The CAFC found that the petition neither mentions coil rod nor any of the uses of coil rod, and the petition did not list any domestic producers of coil rod in its description of the domestic threaded rod industry.³⁰ In short, the CAFC noted that the record of this case does not support a finding that coil rod was ever considered part of the investigation and given the evidence that coil rod is a distinctly different product in a different domestic industry than the steel threaded rod that was investigated, the Department’s scope determination was not supported by substantial evidence.³¹ The CAFC found that there is “no evidence to rebut Patterson’s evidence that domestic producers of coil rod were entirely excluded from the {ITC}’s investigation and that no evidence of sales of coil rod were included by any respondents.”³² Accordingly, the CAFC concluded that the record evidence showed that the Department’s and the ITC’s investigations that resulted in the *Order* was not on Patterson’s coil rod but rather other kinds of steel threaded rod.³³ Therefore, the CAFC found that the

²⁷ See *Patterson CAFC 2014* at 11.

²⁸ *Id.*

²⁹ See *Patterson CAFC 2014* at 12.

³⁰ *Id.*, at 13.

³¹ *Id.*, at 13-14.

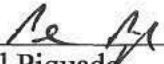
³² *Id.*, at 14.

³³ *Id.*, at 15; Cf. *Sango Int’l, L.P. v. United States*, 484 F. 3d 1371, 1380-1 (CAFC 2007).

Department's scope determination on Patterson's coil rod was not supported by substantial evidence and thus Patterson's coil rod is not subject to the *Order*.

VI. Final Results of Redetermination

Following the express directive of the CIT's Remand Order, which instructs the Department to act in accordance with the CAFC's decision in *Patterson CAFC 2014*, the Department finds on remand that the *Order* did not cover Patterson's coil rod but rather other kinds of steel threaded rod. Our decision is consistent with the CAFC's decision in *Patterson CAFC 2014* that there is insufficient evidence to conclude that Patterson's coil rod was part of the ITC's material injury investigation. Accordingly, the Department finds that Patterson's coil rod is not subject to the *Order*.



Paul Piquado
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for Enforcement and Compliance

26 January 2015
Date