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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-805]

Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is notifying the public that the Court of International Trade's (CIT or the Court) final judgment in this case is not in harmony with Commerce's final scope ruling and is, therefore, finding that certain black, circular tubing produced to ASTM A-513 specifications by Maquilacero S.A. de C.V. (Maquilacero) is not within the scope of the antidumping duty order on circular welded non-alloy steel pipe from Mexico.

APPLICABLE DATE: February 19, 2018

FOR FURTHER INFORMATION CONTACT: Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6312.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 2015, Commerce issued the Maquilacero Scope Ruling,¹ in which it determined, under 19 CFR 351.225(k)(1), that 46 products produced by Maquilacero to specification A-513 did not meet the exclusion for “mechanical tubing” in the scope of the *Order*,² and were, therefore, within the scope of the *Order*. In particular, Commerce relied upon a prior scope ruling pertaining to certain mechanical tubing products produced by Productos Laminados de Monterrey, S.A. de C.V., and Prolamsa, Inc. (Prolamsa), which was conducted under 19 CFR 351.225(k)(2), and which defined “mechanical tubing” as tubing that met a variety of physical, chemical, and mechanical characteristics, and was stenciled.³ Commerce found that Maquilacero’s tubing was not stenciled, and, thus, was not “mechanical tubing.”⁴ Maquilacero challenged Commerce’s final scope ruling before the CIT.

On August 30, 2017, the Court remanded the Maquilacero Scope Ruling to Commerce.⁵ Specifically, the Court held that Commerce did not “properly consider how the mention of stenciling came to be found in the ruling excluding Prolamsa’s pipe from the Order,” particularly given that stenciling “does not change the inherent quality or the intended use of the product.”⁶ As such, the Court concluded that “the imposition of a requirement {(i.e., stenciling)} having nothing to do with the physical characteristics of mechanical tubing and that appeared in the

¹ See Memorandum, “Final Scope Ruling on Certain Black, Circular Tubing Produced to ASTM A-513 Specifications by Maquilacero S.A. de C.V.,” dated July 27, 2015 (Maquilacero Scope Ruling).

² 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) (the *Order*).

³ See Memorandum, “Final Scope Ruling on Certain Black, Circular Tubing Produced to ASTM A-513 Specifications by Productos Laminados de Monterrey, S.A. de C.V., and Prolamsa, Inc.,” dated January 12, 2015 (Prolamsa Final Scope Ruling).

⁴ See Maquilacero Scope Ruling.

⁵ See *Maquilacero S.A. de C.V. v. United States*, Slip Op. 17-117, Court No. 15-00287 (CIT 2017).

⁶ See *Maquilacero*, Slip Op. 17-117, at 29.

Prolamsa Final Scope Ruling by chance {} was unreasonable.”⁷ Thus, the Court found “that Commerce’s ruling unlawfully expanded the scope of the Order to include {Maquilacero}’s merchandise,”⁸ and remanded the Final Scope Ruling to Commerce to “(1) not impose a stenciling requirement, and (2) find that Maquilacero’s tubing is excluded from the *Order* based on its analysis found on pages 6-9 of the Final Scope Ruling.”⁹ In particular, the Court instructed Commerce to “find plaintiff’s products are excluded from the *Order* using the same analysis in the Final Scope Ruling and that is found in this opinion.”¹⁰

Pursuant to the Court’s instructions, Commerce issued the Final Remand Results.¹¹ Consistent with the Court’s instructions, Commerce found that the 46 products included in Maquilacero’s scope ruling request are excluded from the *Order*, because those products meet all physical, chemical, and mechanical properties of mechanical tubing, notwithstanding that the products are not stenciled. On February 9, 2018, the Court sustained Commerce’s Final Remand Results in their entirety.¹²

Timken Notice

In its decision in *Timken*,¹³ as clarified by *Diamond Sawblades*,¹⁴ the United States Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to sections 516A(c) and (e) of the Act, Commerce must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s February 9, 2018, judgment in *Maquilacero*, sustaining Commerce’s

⁷ See *Maquilacero*, Slip Op. 17-117, at 32.

⁸ *Id.*, at 26.

⁹ See *Maquilacero*, Slip Op. 17-117, at 32-33.

¹⁰ *Id.*, at 33.

¹¹ See Final Results of Redetermination Pursuant to Remand in *Maquilacero S.A. de C.V. v. United States*, Ct. No. 15-00287, November 27, 2017 (Final Remand Results).

¹² See *Maquilacero S.A. de C.V. v. United States*, Slip Op. 18-8, Court No. 15-00287 (CIT 2018).

¹³ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), at 341.

¹⁴ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 20 10) (*Diamond Sawblades*).

decision in the Final Remand Results that the 46 products included in Maquilacero's scope ruling request are excluded from the *Order* constitutes a final decision of the court that is not in harmony with the Maquilacero Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, Commerce will continue the suspension of liquidation of the 46 products at issue pending expiration of the period to appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Scope Ruling

Because there is now a final court decision with respect to the Maquilacero Scope Ruling, Commerce is amending its final scope ruling. Commerce finds that the scope of the *Order* does not cover the products addressed in the Maquilacero Scope Ruling. Commerce will instruct U.S. Customs and Border Protection (CBP) that the cash deposit rate will be zero percent for the 46 products subject to Maquilacero's scope ruling request. In the event that the CIT's ruling is not appealed, or if appealed, upheld by the CAFC, Commerce will instruct CBP to liquidate entries of the 46 products at issue without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: February 13, 2018.

Christian Marsh,

Deputy Assistant Secretary

for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

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