



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
OFFICE OF THE CHIEF COUNSEL FOR IMPORT ADMINISTRATION
Washington, D.C. 20230

PUBLIC DOCUMENT

May 9, 2011

VIA ELECTRONIC FILING

Ms. Tina Potuto Kimble
Clerk of the Court
United States Court of International Trade
One Federal Plaza
New York, NY 10007

Re: Final Results of Redetermination Pursuant to Court Remand in Constantine N. Polites & Co. v. United States, Court No. 09-00387, Slip Op. 11-31.

Dear Ms. Potuto Kimble:

Pursuant to the Court's opinion of March 23, 2011, enclosed is the United States Department of Commerce's Final Results of Redetermination Pursuant to Court Remand in the above-entitled action. Commerce's remand redetermination is a public document.

The administrative record accompanying this remand will be submitted under separate cover. Should you have any questions concerning this matter, please contact me at (202) 482-4044.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "R. Swayze".

Reid Perry Swayze
Attorney
Office of the Chief Counsel
for Import Administration

Enclosure

cc: (by electronic service)

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Constantine N. Polites v. United States
Court No. 09-00387 (March 23, 2011)
FINAL RESULTS OF REDETERMINATION
PURSUANT TO REMAND

SUMMARY

The U.S. Department of Commerce (the “Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the “Court”) in Constantine N. Polites v. United States, Court No. 09-00387 (March 23, 2011), Slip Op. 11-31. The Court’s remand order was issued with regard to the Department’s August 26, 2010, “Final Results of Redetermination Pursuant to Voluntary Remand” (“First Remand”). The Department has fully complied with the Court’s remand order and has prepared these final remand results in accordance with the Court’s instructions, though we respectfully do so under protest.¹

In its remand opinion, the Court found that the Department’s inclusion of “completed supported elevated platforms and their completed supporting structures,” see First Remand at 2, was unreasonable. See Slip Op. 11-31 at 9-10. Further, the Court found that it was within the Department’s discretion to include scaffolding “kits” within the definition of the “finished scaffolding” exclusion to the antidumping (“AD”) and countervailing duty (“CVD”) orders on circular welded carbon quality steel pipe from the People’s Republic of China (“PRC”)² even though kits were not listed in the Petition, see Slip Op. 11-31 at 10 (citation omitted); however, the Court did not find that there was an evidentiary basis to support our decision to define the “finished scaffolding” exclusion as including “kits.” Id. at 11. Accordingly, on remand, the

¹ See Viraj Group v. United States, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

² See Notice of Antidumping Duty Order: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China, 73 FR 42547 (July 22, 2008); Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 73 FR 42545 (July 22, 2008) (“CWP Orders”).

Court ordered the Department to either 1) provide substantial evidence to support its assertion that the meaning of the “finished scaffolding” exclusion to the scope of the CWP Orders is scaffolding kits, or 2) consider the factors in 19 C.F.R. § 351.225(k)(2) when determining the proper meaning of “finished scaffolding.” Id. at 14.

On April 18, 2011, the Department released the draft results of the Department’s redetermination to Constantine N. Polites & Co. (“Polites”) and Defendant-Intervenors for comments. See Letter from Robert Bolling, Program Manager AD/CVD Operations, Office 4, to Interested Parties, “Request for Comments on the Draft Results of Redetermination Pursuant to Court Remand in Constantine N. Polites v. United States, Court No. 09-00387 (March 23, 2011)” (April 18, 2011) (“Draft Remand Results”). After carefully considering the information on the record, including Polites’s and Defendant-Intervenors’ comments, in these final remand results, the Department has determined that scaffolding kits from the PRC are or may be imported into the United States and, therefore, in accordance with the Court’s opinion in this specific remand proceeding, we find that this evidence supports our definition of “finished scaffolding” as including “kits.” Specifically, in these final remand results, the Department has determined that there is evidence that Chinese-origin scaffolding kits (also sometimes referred to as scaffolding “sets” or “systems” by Chinese companies) are, or may be, imported into the United States. After reviewing this evidence, we continue to find that, based on the definition of scaffolding “kits” established in the First Remand, and Polites’s description of the physical characteristics of its imports on the record of the underlying administrative scope proceeding, pursuant to 19 C.F.R. § 351.225(k)(1), the simple tubes³ imported by Polites are within the scope of the CWP Orders.

³ See First Remand at 14 for a description and discussion of Polites’s imported merchandise.

BACKGROUND

On August 26, 2010, the Department issued its First Remand – the decision on which the Court’s March 23, 2011, remand order is based. In the First Remand, the Department determined that “finished scaffolding,” as excluded from the scope of the CWP Orders, is defined as follows:

“Completed supported elevated platforms and their completed supporting structures made of scaffolding tubes which are attached to each other by means of fittings, couplers, clamps, base plates, and/or other means. The definition of “finished scaffolding” also includes component parts that enter the United States unassembled as a “kit.” A “kit” is understood to mean a packaged combination of component parts that contains, at the time of importation, all of the necessary component parts to fully assemble a final, finished scaffolding.”

Based on this definition of “finished scaffolding,” and Polites’s description of the physical characteristics of its imports on the record of the underlying scope proceeding, pursuant to 19 C.F.R. § 351.225(k)(1), the Department continued to find that the simple tubes imported by Polites are within the scope of the CWP Orders. See First Remand at 13-16.

On April 1, 2011, in response to the Court’s remand order, the Department determined that it was appropriate to reopen the record for the purpose of establishing whether there was evidence that Chinese-origin scaffolding kits are, or may be, imported into the United States as evidentiary support of our assertion in the First Remand that the “finished scaffolding” exclusion to the CWP Orders included “kits.” Specifically, the Department provided Polites and Defendant-Intervenors⁴ with an opportunity to submit information regarding whether scaffolding kits from the PRC are or may be imported into the United States. See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties,

⁴ The Ad Hoc Coalition for Fair Pipe Imports and its individual members (comprised of the following companies: Allied Tube & Conduit; IPSCO Tubulars, Inc.; Sharon Tube Company, Western Tube & Conduit Corporation; and Wheatland Tube Company) (collectively, “Defendant-Intervenors”).

“Remand Determination in Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Opportunity to Submit New Factual Information” (April 1, 2011). Polites and Defendant-Intervenors submitted their responses on April 6, 2011, and April 13, 2011, respectively. See Letter from Polites to the Secretary of Commerce, “Remand Determination in Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Request for Additional Information” (April 13, 2011) (“Polites’s Scaffolding Kits Information”); Letter from Defendant-Intervenors to the Secretary of Commerce, “Remand Determination in Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Submission of New Factual Information” (April 6, 2011) (“Defendant-Intervenors’ Scaffolding Kits Information”). Additionally, the Department conducted independent research on whether scaffolding kits from the PRC are, or may be, imported into the United States and placed the product of this research on the record on April 6, 2011. See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, “Remand Determination in Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Information Regarding Scaffolding Kits” (April 6, 2011) (“Department’s Scaffolding Kits Information”).

On April 18, 2011, the Department released the Draft Remand Results of the Department’s redetermination to Polites and Defendant-Intervenors for comments. Polites and Defendant-Intervenors submitted comments to the Department on April 25, 2011. See Letter from Polites to the Secretary of Commerce, “Request for Comments on the Draft Results of Redetermination Pursuant to Court Remand in Constantine N. Polites v. United States, Court No. 09-00387 (March 23, 2011) Amended” (May 3, 2011) (“Polites’s Draft Remand Comments”); Letter from Defendant-Intervenors to the Secretary of Commerce, “Petitioners’ Comments On The Draft Results Of Redetermination Pursuant To Remand In Constantine N. Polites v. United

States, Court No. 09-00387 (CIT March 23, 2011) And The Scope Inquiry For Circular Welded Carbon Quality Steel Pipe from the People's Republic of China" (April 25, 2011) ("Defendant-Intervenors' Draft Remand Comments").

ANALYSIS

Scaffolding Kits from the PRC Are, or May Be, Imported Into the United States

In these final remand results, we find that the following evidence of Chinese-origin scaffolding kits (also sometimes referred to as scaffolding "sets" or "systems" by Chinese companies)⁵ supports our decision to define the "finished scaffolding" exclusion to include "kits."

The Department's Scaffolding Kits Information contains the following examples of Chinese-origin scaffolding kits:

- In Attachment 1, Ningbo Yinzhou Eternal Star International Industry Co., Ltd. ("Ningbo Yinzhou") offers for sale a "scaffolding kit" exported as "one set in a carton." The place of origin is Zhejiang, PRC. Ningbo Yinzhou lists North America as one of its primary export markets and indicates that it has, "set up good relationships with many clients from the USA."
- In Attachment 2, Wuxi City Marui Metal Products Co., Ltd. ("Marui Metal") offers for sale "cuplock scaffolding" and "ringlock scaffolding," which include "welded steel pipe" and are exported as a "single scaffold kit" with "no extra clamps or accessories" or "small parts" required. Each of these scaffold kits include a "ledger, standard, brace,

⁵ We note that a company's designation of a product as a "kit," "set," or "system" was not material for our analysis; rather, we examined whether these examples fit our original definition of a "kit" as being a "packaged combination of component parts that contains, at the time of importation, all of the necessary component parts to fully assemble a final, finished scaffolding." See generally First Remand at 8-9.

base jack, joint stick and pin, connect pin” and other accessories. The place of origin is Wuxi, PRC. Marui Metal lists North America as one of its primary export markets.

- In Attachment 3, Stepup Scaffold (“Stepup”), a U.S.-based reseller of Chinese scaffolding, offers for sale a “multi-function scaffold set,” which includes two high frames, two platform trusses, four cast wheels, and one steel/plywood plank. Stepup states that the PRC is “home to Stepup Scaffold’s manufacturing plant.” Stepup, on its website, provides customers with its local contact information in several U.S. cities, including Memphis, Los Angeles, New York City, Houston, and Atlanta.
- In Attachment 4, Wisdom Import & Export (Shanghai) Co., Ltd. (“Wisdom”) offers for sale two types of “walk thru frame scaffolding” which are each exported as “one set including two pieces walk thru frame scaffolding, two pieces cross brace, four joint pins,” and “one walking board.” The place of origin is Shanghai, PRC. Wisdom lists North America as one of its primary export markets and includes price offers in U.S. dollars.
- In Attachment 5, Chuzhou Jincheng Metalwork Co., Ltd. (“Jincheng Metalwork”) offers for sale a “galvanized ringlock scaffolding set” exported as a “whole set.” The place of origin is Anhui, PRC. Jincheng Metalwork lists “America” as one of its primary export markets.
- In Attachment 6, Wuxi Shuanghuan Heavy Industry Co., Ltd. (“Wuxi Shuanghuan”) offers for sale a “complete multifunctional scaffold set” which includes two high frames, two platform trusses, four cast wheels, and one steel/plywood plank. Wuxi Shuanghuan is located in Jiangsu, PRC, and exports to North America and worldwide.
- In Attachment 7, Kaiping Youying Scaffold Co., Ltd. (“Kaiping Youying”) offers for sale

“a complete multifunctional scaffold set” that includes two high frames, two platform trusses, four cast wheels, and one steel/plywood plank. Kaiping Youying is a Chinese manufacturer that exports to “America.”

- In Attachment 8, Wuxi Yuqiang Hardware Factory (“Yuqiang”) offers for sale “ringlock system scaffolding” that includes a ledger, brace, plank, base collar, base jack, and steel ladder. This product originates in Wuxi, PRC and Yuqiang indicates that most of its scaffolding products “are sold well” in the United States.

Several other examples of scaffolding kits from the PRC are provided in the Defendant-Intervenors’ Scaffolding Kits Information. In one example, Defendant-Intervenors provide two advertisements for “scaffolding kits” sold by Eternal Star International Industry Company Limited (“Eternal Star”), a company with an address in Ningbo, PRC. See Defendant-Intervenors’ Scaffolding Kits Information at Attachment 9. These scaffolding kits consist of steel tubes, footplates, steel plates, and wheels. Id. Import data compiled from ship manifests indicate that there were imports of Eternal Star scaffolding kits into the United States in 2009. Id. at Attachment 10. The Defendant-Intervenors also submitted an offer, denominated in U.S. dollars, by Marui Metal of a “ring lock scaffold” sold as a “single scaffold kit” with no additional components required. Id. at Attachment 6. In another example, Defendant-Intervenors provide a U.S. Customs and Border Protection (“CBP”) tariff classification ruling on scaffolding rollers imported from the PRC. The ruling states that it is the intention of the United States importer to import these scaffolding rollers “both alone and with the complete unassembled steel scaffolding.” See Defendant-Intervenors’ Scaffolding Kits Information at Attachment 3.

Furthermore, record evidence indicates that scaffolding kits are classified under

Harmonized Tariff Schedule of the United States (“HTSUS”) tariff item 7308.40.00.00 and a significant quantity of Chinese products classified under this tariff item have been imported into the United States. Specifically, a National Import Specialist responsible for products imported under chapters 72 and 73 of the HTSUS informed the Department that scaffolding kits, as defined in the Department’s August 26, 2010, “Final Results of Redetermination Pursuant to Voluntary Remand,” are classified under HTSUS 7308.40.00.00, which is for “equipment for scaffolding, shuttering, propping or pit-propping.” See Department’s Scaffolding Kits Information at Attachment 11; see also Defendant-Intervenors’ Scaffolding Kits Information at Attachment 3. United States import statistics indicate that the PRC was the top source of imports under HTSUS 7308.40.00.00 in each of the last three years. See Department’s Scaffolding Kit Information at Attachment 12; see also Defendant-Intervenors’ Scaffolding Kits Information at Attachment 12.

Finally, contrary to Polites’s assertions in its April 6, 2011, submission that “there are no finished scaffolding kits” and that there is no evidence that scaffolding kits are imported into the United States, see Polites’s Scaffolding Kits Information at 1-2, we find that there is record evidence that scaffolding kits from the PRC are, or may be, imported into the United States.

Based on the above information and supporting documentation from the record, in these final remand results, the Department has determined that there is evidentiary support for our decision that the “finished scaffolding” exclusion to the CWP Orders includes “kits.”

Definition of the “Finished Scaffolding” Exclusion

In its remand order, the Court found the Department’s determination that the definition of “finished scaffolding” includes fully assembled scaffolding to be unreasonable. In accordance with the Court’s ruling, the Department has removed fully assembled scaffolding from the

definition of the “finished scaffolding” exclusion. However, the Court also found that the Department has the discretion to include scaffolding kits in the definition of “finished scaffolding,” but, that absent substantial evidence showing that scaffolding kits are or may be imported into the United States from the PRC, the term “finished scaffolding” remains ambiguous and that the Department would, therefore, be required to consider the additional scope criteria set forth by 19 C.F.R. § 351.225(k)(2). As documented above, the record of this segment contains a number of examples showing that scaffolding “kits” are, or may be, imported into the United States. Specifically, we find that the totality of the record established in this segment of the remand proceeding indicates that: (1) Chinese companies are extending offers of sale of scaffolding kits in United States dollars; (2) the United States is an export market for Chinese companies manufacturing scaffolding kits; and (3) there are substantial entries of Chinese-origin goods falling under the HTSUS category which CBP has informed us would cover scaffolding kits. Based on this record information, the Department finds that it has complied with the first option in the Court’s remand order and, as a result, it is unnecessary to further analyze Polites’s imports under the criteria enumerated by 19 C.F.R. § 351.225(k)(2). Additionally, in accordance with the Court’s remand order concerning the definition of the “finished scaffolding” exclusion established during the First Remand, the Department has determined that, for the purposes of the CWP Orders, the “finished scaffolding” exclusion should be defined as follows: “Component parts of a final, finished scaffolding that enter the United States unassembled as a “kit.” A “kit” is understood to mean a packaged combination of component parts that contains, at the time of importation, all of the necessary component parts to fully assemble a final, finished scaffolding.”

Application of the Scope of the CWP Orders to Polites’s Imports

The Department continues to determine that Polites's simple tubes meet the physical description of merchandise covered by the CWP Orders. See First Remand at 13-14. Moreover, the Department continues to determine that Polites's simple tubes by themselves do not otherwise qualify as scaffolding kits and are, therefore, not subject to the "finished scaffolding" exclusion to the CWP Orders. Id. at 14-15. While the record indicates that scaffolding tubes may be one component of a scaffolding kit, such tubes by themselves are obviously not kits which contain all necessary components to fully assemble a final, finished scaffolding. See, e.g., Department's Scaffolding Kit Information at Attachments 1-2 and 4-8; and Defendant-Intervenors' Scaffolding Kit Information at Exhibit 7. We agree with Polites's assertion that a scaffolding tube could be a "component of {a} kit;" however, we disagree that one potential component of a kit would be "outside the scope as finished scaffolding." See Polites's Scaffolding Kits Information at 2. Therefore, we find that Polites's simple tubes are clearly not "kits" as defined by the "finished scaffolding" exclusion because, upon importation, they are not part of a packaged combination of all component parts necessary to fully assemble a final, finished scaffolding. Specifically, Polites notes that it only imports tubes from the PRC and that it manufactures and installs scaffolding couplers and other scaffolding component parts, such as "twist lock fittings," in the United States. See Letter from Polites to the Secretary of Commerce, "Polites Response to Petitioner's Letter of June 1, 2009" (June 8, 2009) at 2; Letter from Polites to Secretary of Commerce, "Polites Response to Petitioners' Letter of Opposition" (March 30, 2009) at 2.

Consequently, the Department continues to determine that, pursuant to 19 C.F.R. § 351.225(k)(1), the simple tubes imported by Polites are within the scope of the CWP Orders because Polites's tubes meet the physical description of merchandise covered by the CWP

Orders and do not meet the exclusion for “finished scaffolding” in the scope of the CWP Orders.

RESULTS OF FINAL REMAND DETERMINATION

The Department has determined that the record supports that scaffolding kits from the PRC are, or may be, imported into the United States. As a result, we find that the record established in this segment of the remand proceeding supports our prior determination that the meaning of the “finished scaffolding” exclusion within the scope of the CWP Orders is scaffolding kits. In accordance with the Court’s remand opinion, we have removed references to “fully assembled scaffolding,” see Slip Op. 11-31 at 9-10, from our definition of the “finished scaffolding” exclusion. We now determine that “finished scaffolding,” as excluded from the scope of the CWP Orders, is defined as follows: “Component parts of a final, finished scaffolding that enter the United States unassembled as a “kit.” A “kit” is understood to mean a packaged combination of component parts that contains, at the time of importation, all of the necessary component parts to fully assemble a final, finished scaffolding.” Based on the definition of “finished scaffolding” established by this final remand determination and Polites’s description of the physical characteristics of its imports on the record of the underlying scope proceeding, pursuant to 19 C.F.R. § 351.225(k)(1), the Department continues to determine that the simple tubes imported by Polites are within the scope of the CWP Orders.

COMMENTS

Comment 1: Whether the Department has the Discretion to Define the “Finished Scaffolding” Exclusion as “Kits”

Polites argues that the Department does not have the discretion to define the “finished scaffolding” exclusion as “kits” because “finished scaffolding” was not explicitly defined as “kits” either in the scope of the Petition or in the CWP Orders. See Polites’s Draft Remand

Comments at 2-3. For example, Polites asserts that it was within the Department's discretion to reference "kits" in the scope of the AD and CVD orders on aluminum extrusions from the PRC⁶ only because the petition in that case explicitly referred to "kits." *Id.* at 2. Polites contends that, by defining the "finished scaffolding" exclusion as "kits," the Department has interpreted the CWP Orders in a manner contrary to their terms and, thereby, changed the scope of the CWP Orders. *Id.*

Department's Position

We are not persuaded by Polites's argument that the Department does not have the discretion to define the "finished scaffolding" exclusion to the CWP Orders as "kits." In its remand opinion, the Court already found that, "{the Department} asserts correctly that it has discretion to include scaffolding kits in the definition of 'finished scaffolding' even when such kits are not listed in the Petition." *See* Slip Op. 11-31 at 10, citing Smith-Corona Group v. United States, 713 F.2d 1568, 1571 (Fed. Cir. 1984). Accordingly, we find that whether "kits" were specifically listed in the Petition is not an issue before the Department in this remand proceeding.

Comment 2: Whether there is Evidentiary Support for the Department's Determination that Scaffolding Kits from the PRC Are, or May Be, Imported into the United States

Polites asserts that there is no evidence that scaffolding "kits" are or may be imported into the United States from the PRC. *See* Polites's Draft Remand Comments at 1-2 and 4; Polites's Scaffolding Kits Information at 1-2. In support of this assertion, Polites cites to an "interview with a local scaffolding company manager who had never heard of scaffolding kits."

⁶ See generally Aluminum Extrusions from the People's Republic of China: Initiation of Antidumping Duty Investigation, 75 Fed. Reg. 22,109 (Apr. 27, 2010); Aluminum Extrusions from the People's Republic of China: Initiation of Countervailing Duty Investigation, 75 Fed. Reg. 22,114 (Apr. 27, 2010).

Id. at 1-2.

Defendant-Intervenors argue that the many offers for exportation and sale of PRC-origin scaffolding kits now on the record demonstrate at least the possible importation of scaffolding kits into the United States. See Defendant-Intervenors' Draft Remand Comments at 2.

Department's Position

Contrary to Polites's assertion that the Department's determination in the Draft Remand that Chinese-origin scaffolding kits are or may be imported into the United States is "purely speculative," see Polites's Draft Remand Comments at 2, the record contains examples of Chinese-origin scaffolding kits (also sometimes referred to as scaffolding "sets" or "systems" by Chinese companies) that are, or may be, imported into the United States. Specifically, as we noted in the Draft Remand, the record contains examples of Chinese companies which produce scaffolding kits and which offer these products to customers in the United States. See Draft Remand at 4-7. Additionally, the record contains import data compiled from ship manifests indicating that there were Chinese-origin scaffolding kits imported into the United States in 2009 and that there were imports of Chinese-origin merchandise under HTSUS subheading 7308.40.00.00 which, according to the National Import Specialist responsible for this chapter of the HTSUS, is the proper classification for scaffolding kits. See Department's Scaffolding Kits Information at Attachment 11.

We also are not persuaded by Polites's argument that the anecdotal information provided by a single U.S. importer and domestic supplier claiming to have never heard of scaffolding kits somehow renders the Department's decision unsupported by substantial evidence. See Polites's Draft Remand Comments at 2; Polites's Scaffolding Kits Information at 1. Established judicial precedent indicates that "substantial evidence" means "such relevant evidence as a reasonable

mind might accept as adequate to support a conclusion.” See Crawfish Processors Alliance v. United States, 483 F.3d 1358, 1361 (Fed. Cir. 2007) (quoting Consol. Edison v. NLRB, 305 U.S. 197, 229 (1939)). Further, the possibility of drawing inconsistent conclusions from record evidence does not render the Department’s conclusions unsupported by substantial evidence. See Consolo v. Fed. Mar. Comm’n, 383 U.S. 607, 620 (1966).

Therefore, as we noted in the Draft Remand, we find that there is evidentiary support for the Department’s determination that scaffolding kits from the PRC are, or may be, imported into the United States.

Comment 3: The Department’s Discussion of HTSUS Classification in Connection with Whether There Are or May Be Imports of Chinese-Origin Scaffolding Kits into the United States

Polites claims that the Department has “adopted” the HTSUS classification of scaffolding kits as “its cause” in this segment of the remand proceeding. See Polites’s Draft Remand Comments at 3-4. According to Polites, “record evidence now confirms that {its} tubing is classified under 7308.40.00.00” and because this HTSUS number is not included in the scope of the CWP Orders, its imports are, therefore, excluded from the scope. Id. at 4.

Defendant-Intervenors argue that the Department should use HTSUS item 7308 and its corresponding Explanatory Note to establish the potential for importation of scaffolding kits. See Defendant-Intervenors’ Draft Remand Comments at 3-4.

Department’s Position

As an initial matter, we remind parties that the Court, in its remand opinion, has already declined to address prior arguments raised by Polites concerning the HTSUS classification of its imported merchandise “because the only issue directly before it is whether {the Department’s} definition of “finished scaffolding” is reasonable and supported by the record.” See Slip Op.

11-31 at 12, n. 8.⁷ Contrary to Polites's claim that HTSUS classification rather than product description is dispositive, see Polites's Draft Remand Comments at 3-4, as we noted in the CWP Orders, and have continued to aver throughout these remand proceedings, the scope of the CWP Orders states that the product description, and not the HTSUS classification, is dispositive concerning whether merchandise imported into the United States falls within the scope. See CWP Orders, 73 Fed. Reg. at 42,547-48 and 73 Fed. Reg. at 42,545-46.

In this light, we also disagree with Polites's argument that the Department has "adopted {HTSUS} classification as its cause" in this segment of the remand proceeding. See Polites's Draft Remand Comments at 3-4. As we noted in the Draft Remand and continue to note here, we looked at HTSUS classification solely to determine if there was an evidentiary basis to conclude, in accordance with the Court's order, that there are, or may be, imports of Chinese-origin scaffolding kits into the United States. See Draft Remand at 7.

Finally, we agree with the Defendant-Intervenors that the Explanatory Notes for HTSUS 7308.40.00.00 do indicate that "tubular scaffolding and similar equipment" are covered by this classification and that this provides an indication that scaffolding kits are, or may be, imported into the United States. See Defendant-Intervenors' Draft Remand Comments at 3-4; and Defendant-Intervenors' Scaffolding Kits Information at Exhibit 1, p. 2. However, we disagree that the listing of "tubular scaffolding" in the Explanatory Notes, by itself, "fully establishe{s}" the potential for importation of scaffolding kits. See Defendant-Intervenors' Draft Remand Comments at 3. Rather, for the purposes of this remand, we find that it is more appropriate to

⁷ Additionally, as we noted in the First Remand, the record established for the underlying administrative scope proceeding indicates that Polites's simple tubes would be classified by CBP under HTSUS 7306.30.50.32, which is one of the HTSUS classifications listed for in-scope merchandise in the CWP Orders. See First Remand at 21 (citing Letter from Polites to the Secretary of Commerce entitled, "Response to Letter Dated February 12, 2009" (March 30, 2009) at 2). Conversely, there is no evidence on the record demonstrating that Polites's simple tubes should be classified under HTSUS 7308.40.00.00.

look at the record as a whole to determine whether there are, or may be, imports of Chinese-origin scaffolding kits into the United States.

Comment 4: Whether the Department Should Determine Whether Polites's Tubes May Be a Component Part of a Scaffolding Kit

Defendant-Intervenors urge the Department to remove its statement in the Draft Remand that Polites's "scaffolding tubes could be a component of {a} kit." See Defendant-Intervenors' Draft Remand Comments at 5-6 (citing Draft Remand at 9). Defendant-Intervenors claim that it is particularly inappropriate for the Department to make such a determination because Polites has not sought a scope ruling on a potential kit import, but has limited its scope request to the tubes themselves. Id. at 6.

Department's Position

Concerning the Defendant-Intervenors' argument that our statement in the Draft Remand was "particularly inappropriate," we note that our statement only consisted of the following:

"We agree with Polites's assertion that its scaffolding tubes could be a 'component of {a} kit;' however, we disagree that one potential component would be outside the scope {of the CWP Orders} as finished scaffolding."

See Draft Remand at 9 (emphasis added). In other words, we were not making a finding that Polites simple tubes were a component of a scaffolding kit; rather, we simply noted that we agreed that a scaffolding tube (as with any other component) hypothetically could be part of a kit. The point, as emphasized in the Draft Remand and reiterated herein, is that a scaffolding "kit" is "understood to mean a packaged combination of component parts that contains, at the time of importation, all of the necessary component parts to fully assemble a final, finished scaffolding." To minimize confusion and make this statement concerning our position more general, we have slightly modified the statement in the block quote above to read: "We agree with Polites's

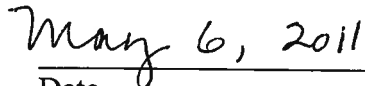
assertion that a scaffolding tube could be . . .” (emphasis added). This change is reflected in the text of the final remand above.

CONCLUSION

After analyzing the comments from Polites and Defendant-Intervenors, the Department continues to determine that the record supports that scaffolding kits from the PRC are, or may be, imported into the United States. As a result, we continue to find that the record established in this segment of the remand proceeding supports our prior determination that the meaning of the “finished scaffolding” exclusion within the scope of the CWP Orders is scaffolding kits. Based on the definition of “finished scaffolding” established by this final remand determination and Polites’s description of the physical characteristics of its imports on the record of the underlying scope proceeding, pursuant to 19 C.F.R. § 351.225(k)(1), the Department continues to determine that the simple tubes imported by Polites are within the scope of the CWP Orders.



Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration



Date