BELL SUPPLY COMPANY, LLC, V. UNITED STATES
Consol. Court No. 14-00066
Slip Op. 15-73 (CIT, July 9, 2015)

Final Results of Redetermination Pursuant to Remand

A. SUMMARY

The 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 (CIT or Court) in *Bell Supply Company, LLC, v. United States*, Slip Op. 15-73 (CIT, July 9, 2015) (*Opinion*). These final results concern the Final Scope Ruling[1] on whether certain unfinished oil country tubular goods (OCTG) (including green tubes)[2] produced in the People's Republic of China (China or the PRC), regardless of where the finishing of such OCTG takes place, are included in the scope of the antidumping and countervailing duty *Orders*.[3]

In its *Opinion*, the CIT remanded the Department's final scope ruling that certain green tubes manufactured in China and further processed in Indonesia were not substantially transformed and were therefore subject to the *Orders* on Chinese OCTG. In remanding the case to the Department, the CIT instructed the Department to identify scope language that could reasonably be interpreted to include OCTG finished in third countries. The CIT indicated that in interpreting the scope of the *Orders*, the Department is limited to clarifying the scope based on

[1] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Green Tubes Manufactured in the People's Republic of China and Finished in Countries other than the United States and the People's Republic of China," (February 7, 2014) (Final Scope Ruling).
[2] Green tube is a type of unfinished OCTG, and therefore references to unfinished OCTG include green tubes.
[3] *See Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 3203 (January 20, 2010) and *Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 75 FR 28551 (May 21, 2010) (collectively, *Orders*).

the actual words of the *Orders*.[4] The CIT stated that, in its final rulings on these scope inquiries, the Department did not look to the words of the *Orders* to find that green tubes from China, later heat treated in Indonesia, was within the scope, and that by doing so the Department acted contrary to law.[5]

On September 18, 2015, the Department issued a draft redetermination in which, pursuant to the Court's remand, we reconsidered our findings in the Final Scope Ruling.[6] On September 30, 2015, we received comments from Bell Supply Company, LLC (Bell Supply), Maverick Tube Corporation (Maverick), and United States Steel Corporation (U.S. Steel).[7]

In accordance with the Court's instructions, the Department has revisited its analysis as applied in its Final Scope Ruling. After further analysis, and for the reasons explained below, the Department interprets the scope language to include unfinished OCTG (*e.g.*, green tubes) manufactured in China, regardless of whether these unfinished OCTG products are finished in countries other than the United States and China (*i.e.*, third countries).

B. SCOPE OF THE ORDERS

The current scope description as published in both *Orders* provides that:

> The scope of this order consists of certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to API or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products),

[4] *See Opinion* at 13.
[5] *Id.*
[6] *See* letter from the Department to interested parties titled "Draft Results of Redetermination Pursuant to Remand in the Antidumping and Countervailing Duty Scope Inquiry of Certain Oil Country Tubular Goods from the People's Republic of China," released on September 18, 2015 (Draft Redetermination).
[7] *See* Letters to the Department titled, "*Bell Supply Company, LLC v. United States*, Consol. Ct. No. 14-00066, Oil Country Tubular Goods from China, Scope Inquiry Remand, Case Nos. A-570-943 and C-570-944: Comments on Draft Results of Redetermination" (Bell Supply's Comments), "Oil Country Tubular Goods from the People's Republic of China: Comments on Draft Results of Remand Redetermination, CIT Ct. No. 14-00066 (Maverick's Comments), and "Comments on the Draft Remand Determination in *Bell Supply Company, LLC v. United States*, U.S. Court of International Trade Court No. 14-66, Slip Op. 15-73" (U.S. Steel's Comments), respectively.

whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. Excluded from the scope of the order are casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The OCTG coupling stock covered by the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00,, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, and 7304.59.80.80.

The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this order is dispositive.

C. BACKGROUND

On May 21, 2010, the Department published in the *Federal Register* the *Orders* on OCTG from China.[8] On March 26, 2012, the Department received a request from United States Steel Corporation, TMK IPSCO, Wheatland Tube Company, Boomerang Tube LLC, and V&M Star L.P. (collectively, Petitioners) for a determination as to whether unfinished OCTG (including green tubes) produced in China, regardless of where the finishing of such OCTG takes place, are included in the scope of the *Orders*.

On May 31, 2013, the Department issued its preliminary ruling in the scope inquiry, finding that unfinished OCTG manufactured in China and finished in countries other than the United States and China (*i.e.*, third countries) is within the scope of the *Orders* where 1) the finishing consists of heat treatment by quenching and tempering, upsetting and threading (with integral joint), or threading and coupling; and 2) the products are made to the following specifications and grades: American Petroleum Institute (API) specification 5CT, grades P-110, T-95 and Q-125.[9] On February 7, 2014, the Department issued its final ruling, affirming its preliminary ruling in the scope inquiry.

Bell Supply challenged the Department's final ruling before the CIT. The CIT remanded the case to the Department, instructing it to identify scope language that could be reasonably interpreted to include OCTG finished in third countries.

D. DISCUSSION

The Department conducted the scope inquiry at the request of Petitioners. Pursuant to a substantial transformation analysis, the Department issued in the Final Scope Ruling its determination that the Indonesian processing at issue did not constitute substantial transformation

[8] *See Orders*.
[9] The API distributes publications and technical standards that are designed to help users comply with legislative and regulatory requirements, and safeguard health, ensure safety, and protect the environment.

such that the Chinese green tubes became Indonesian OCTG. Bell Supply, an importer of the contested merchandise, challenged the Department's final ruling to the CIT. Bell Supply argued that the Department's substantial transformation analysis was unlawful, and that the agency should have conducted its analysis pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act). Alternatively, Bell Supply argued that the Department's conclusions *vis-à-vis* its substantial transformation analysis were not supported by substantial evidence.

On July 9, 2015, the CIT remanded the Department's Final Scope Ruling. In its remand to the Department, the CIT instructed the Department to identify scope language that could reasonably be interpreted to include OCTG finished in third countries. The CIT further indicated that in interpreting the scope of the *Orders*, the Department is limited to clarifying the scope based on the actual words of the *Orders*.[10] The CIT stated that, in its Final Scope Ruling, the Department did not look to the words of the *Orders* to find that green tube from China, later heat treated in Indonesia, was within the scope, and that by doing so the Department acted contrary to law.[11]

E. LEGAL FRAMEWORK

"Scope orders are 'interpreted with the aid of the antidumping petition, the factual findings and legal conclusions adduced from the administrative investigations, and the preliminary order.' Thus, review of the Petitions and the Investigations may provide valuable guidance as to the interpretation of the final order. But they cannot substitute for language in the order itself. It is the Department's responsibility, not those who requested the proceeding, to

[10] *See Opinion* at 13.
[11] *Id.*

determine the scope of the final order. Thus, a predicate for the interpretive process is language in the order that is subject to interpretation."[12]

The regulations governing the Department's antidumping and countervailing duty scope determinations can be found at 19 CFR 351.225. Once the Department has considered the language of the order itself, it considers the descriptions of the product contained in the Petitions, the initial investigation, the determinations of the Secretary (including prior scope determinations) and findings of the International Trade Commission (ITC).[13] Such scope determinations may take place with or without a formal inquiry.[14] If the Department determines that these descriptions are dispositive of the matter, it will issue a final scope ruling as to whether or not the merchandise is covered by the order.[15]

Conversely, when the descriptions of the merchandise are not dispositive, the Department will consider the following additional criteria set forth in 19 CFR 351.225(k)(2): i) the physical characteristics of the product; 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. These factors are known commonly as the *Diversified Products* criteria.[16] 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 record evidence before the Department.

[12] *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097 (Fed. Cir. 2002) (quoting *Smith Corona Corp. v. United States*, 915 F.2d 683, 685 (Fed. Cir. 1990) and citing *Ericsson GE Mobile Commc'ns, Inc. v. United States*, 60 F.3d 778, 782 (Fed. Cir. 1995)).
[13] *See* 19 CFR 351.225(d) and 351.225(k)(1).
[14] *See* 19 CFR 351.225(d) and 351.225(e).
[15] *See* 19 CFR 351.225(d).
[16] *See Diversified Prods. Corp. v. United States*, 572 F. Supp. 883 (CIT 1983).

F. COMMENTS FROM INTERESTED PARTIES

On September 18, 2015, the Department issued a draft redetermination in which, pursuant to the Court's remand, we reconsidered our findings in the Final Scope Ruling.[17] On September 30, 2015, we received comments from Bell Supply, Maverick, and U.S. Steel.[18]

Bell Supply's Comments

Bell Supply argues that the Department's Draft Redetermination fails to comply with the Court's request that the Department identify actual language from the scope of the *Orders* that could be reasonably interpreted to include OCTG finished in third countries in order to find that the merchandise in question is covered by the scope of the *Orders*.[19] Bell Supply contends that, for several reasons, the Department's finding that the language in the *Orders* defining subject merchandise as including OCTG "whether finished ... or unfinished (including green tubes and limited service OCTG products)" can be reasonably interpreted to cover the finished OCTG that Bell Supply imports from Indonesia is flawed and is contrary to the holding of the Court in its *Opinion*, which "expressly cautioned the Department that it would be improper to shift the burden to Bell Supply of identifying language that clearly excludes the merchandise in question."[20]

First, Bell Supply argues that the Department's conclusion in the Draft Redetermination that the scope language in the *Orders* covers OCTG heat treated and finished in third countries is contrary to the Department's own analysis of this scope language in the Preliminary Scope Determination.[21] Specifically, Bell Supply states that the observation made by the Department in

[17] *See* Draft Redetermination.
[18] *See* Bell Supply's Comments, Maverick's Comments, and U.S. Steel's Comments, respectively,
[19] *See* Bell Supply's Comments at 1-8.
[20] *Id*. at 2-3.
[21] *Id*. at 3-4 (citing to Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Patrick Edwards and Nancy Decker, International Trade

its Preliminary Scope Determination remains true (*i.e.*, "while it is clear that unfinished OCTG produced in China and imported into the United States is covered by the *Orders*, it 'does not necessarily follow' that unfinished OCTG finished in a third country is also covered by the *Orders*, nor have Petitioners pointed to any discussion of these issues from the Petitions or the investigation.").[22] Bell Supply contends that while the Department may, under certain circumstances, change its interpretation of language, it must provide some reasoned basis for the change – none of which the Department provided here. Second, Bell Supply argues that the Department's scope analysis disregards the condition of the merchandise as imported into the United States as the merchandise is not green tube or "unfinished" OCTG of any kind, but rather finished OCTG that meets all of the requirements/specifications at time of entry.[23] Finally, Bell Supply contends that the Department's finding that "unfinished" OCTG includes finished OCTG heat treated and finished in Indonesia because there is no language in the scope that specifically says otherwise runs contrary to the Court's *Opinion*.[24]

Bell Supply also argues that the Department's interpretation of the term "unfinished" OCTG as including OCTG heat treated and finished in third countries is not only unsupported by any language in the *Orders*, but is also "unreasonable."[25] First, according to Bell Supply, under the Department's logic, all finished OCTG would be within the definition of unfinished OCTG as all finished OCTG is at one point unfinished OCTG, *i.e.*, green tube.[26] Second, Bell Supply contends that had it been the intent of either Petitioners or the Department to include within the

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Analysts, AD/CVD Operations, Office 7, "Preliminary Scope Ruling on Green Tubes manufactured in the People's Republic of China (PRC) and Finished in Countries Other than the United States and the PRC, dated May 31, 2013 (Preliminary Scope Determination)).

[22] *Id*. at 3-4.

[23] *Id*. at 4-5.

[24] *Id*. at 5 (citing to the Court's *Opinion* at 32 (when there is no written language in the scope or in the record to confirm the existence of such a practice, the failure to clearly incorporate such an intent in the scope language cannot create the presumption of inclusion)).

[25] *Id*. at 6-8.

[26] *Id*. at 6-7.

scope of the *Orders* OCTG that is heat treated and finished in third countries, language to that effect would have been included in the scope of the *Orders* - but there is no such language nor is there any language indicating that merchandise processed in third countries is to be covered.[27] Finally, Bell Supply argues that it has been the long-standing rule that heat treatment determines country of origin for OCTG.[28]

Next, Bell Supply argues that the Petitions and ITC Investigation offer no support for the Department's interpretation of the scope language.

With regard to the Petitions, Bell Supply states that the Department's reliance on the Petitions' description of the merchandise as well as the statement in the Petitions that green tubes and unfinished OCTG must be further processed through heat treatment before they can be sold as OCTG is misguided.[29] According to Bell Supply, nothing in the quoted language indicates that OCTG that has been heat treated and processed into finished OCTG in a third country is intended to be covered. Citing to language from the Petitions, Bell Supply argues that the Petitions were explicit in focusing on green tube and unfinished OCTG *that is imported into the United States* in that form (emphasis added).[30] Finally, Bell Supply contends that in construing the language in the Petitions, it is important to keep in mind that Petitioners were aware that finished OCTG produced using Chinese green tubes was being imported into the United States.[31] Had Petitioners intended to cover such merchandise, Bell Supply argues, it is "implausible" that

[27] *Id*. at 7.
[28] *Id*. at 7-8 (citing to U.S. Customs and Border Protection (CBP) Ruling HQ 088224); *see also* Letter to the Department, "Oil Country Tubular Goods from the People's Republic of China: Response to Request for Scope Ruling," dated April 26, 2012, at Attachment 1.
[29] *Id*. at 8.
[30] *Id*. at 9 (citing to Letter to the Department from Wiley Rein LLP, Skadden, Arps, Slate, Meagher & Flom LLP, and Schagrin Associates, "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Oil Country Tubular Goods From the People's Republic of China, Volume 1: Common Issues and Injury," dated April 8, 2009, at 6).
[31] *Id*. at 9-10.

they would have limited their discussion of green tube in the Petitions solely to green tube that has been imported into the United States in that form, using the language in the Petitions.

With regard to the ITC Investigation, Bell Supply argues that the Department's interpretation of the ITC's injury determination is misplaced. First, Bell Supply contends that the Department did not consider the actual descriptions of the merchandise in the ITC's determination.[32] Rather, according to Bell Supply, the Department focused on the basis of the ITC's injury determination (the threat of material injury rather than present material injury) regardless of the fact that nothing in the Department's regulations or in any prior judicial decision authorizes the Department to interpret the scope of an order differently depending upon whether the order was based on present material injury or threat. Second, Bell Supply contends that despite the Department's argument in the Draft Redetermination that merchandise shipped to intermediate third countries for processing prior to importation by the United States implicitly was covered by the ITC's threat analysis, the ITC's statutory threat analysis in the OCTG ITC Investigation was focused solely on the likelihood that Chinese producers would increase exports from China to the United States in the imminent future.[33] Belly Supply states that "while the ITC did consider the levels of Chinese exports to third countries, it did so for the limited purpose of determining whether it is likely that such exports to third countries would be shifted to increase exports from China to the United States in the imminent future."[34] Finally, Bell Supply argues that the Department's Draft Redetermination ignores the fact that in previous injury investigations involving OCTG, the ITC treated U.S. companies that heat treat imported unfinished OCTG in the United States as members of the U.S. domestic OCTG industry.[35] Bell

[32] *Id*. at 10.
[33] *Id*. at 12.
[34] *Id*. at 12-13.
[35] *Id*. at 13.

Supply contends that the ITC's previous treatment of these U.S. companies demonstrates that the ITC would have also understood that companies that heat treat and finish OCTG in third countries are producers of finished OCTG from those third countries, and the resulting exports to the United States constitute imports of non-subject finished OCTG from third countries - not unfinished OCTG from China.

Finally, Bell Supply states that instructing U.S. Customs and Border Protection (CBP) to collect cash deposits and assess antidumping and countervailing duties only on the value of the imported OCTG that is attributable to unfinished OCTG from China and not on the portion of the value attributable to finishing in a third country is consistent with the basis of the Department's scope determination.

Maverick's Comments

Maverick argues that the Department's Draft Redetermination fully complies with the Court's request that the Department identify actual language from the scope of the *Orders* that could be reasonably interpreted to include OCTG finished in third countries in order to find that the merchandise is covered by the scope of the *Orders*.[36] Maverick states that because the scope language itself is reasonably interpreted to include Chinese green tube finished in third countries, there is no need to perform either a substantial transformation analysis or an analysis of the factors enumerated in section 781(b) of the Act.[37] Maverick also states that the Department's conclusion is supported by evidence regarding the intent of the Petitions and by the ITC's analysis in its final threat of material injury determination and it is "entitled to 'significant

[36] *See* Maverick's Comments at 2-4.
[37] *Id*. at 2-5.

deference' since it is not contrary to the terms of the order and does not change the scope of the order."[38]

Additionally, according to Maverick, while the Draft Redetermination properly concludes that the scope of the *Orders* can reasonably be interpreted to include Chinese-made green tubes that are finished in third countries, the Department appropriately decided to conduct its remand analysis under protest. Maverick continues to believe that the Department has the inherent authority to conduct a substantial transformation analysis to determine country of origin, regardless of whether that analysis is conducted before or after the *Orders*, and that this is distinct from the circumvention analysis set out in section 781(b) of the Act.[39]

Finally, with regard to the Department's solicitation of comments related to (i) the manner in which importers should report the percentage of the value of the imported product attributable to unfinished green tubes and (ii) the consequences if they fail to do so, Maverick states that the Department should, at the time of entry, require importers of Chinese green tube finished in third countries to provide certifications and maintain supporting documentation identifying (i) the original producer of the unfinished green tube and (ii) the value of the unfinished green tube.[40] According to Maverick, if the importer is unable to identify the original producer of the green tube or the green tube's share of the imported finished OCTG's value, then the PRC-wide antidumping and all others countervailing duty rate should be collected on the full value of the imported merchandise.[41] If the imported tubes were produced by a Chinese

[38] *Id*. at 3-4.
[39] *Id*. at 4-5.
[40] *Id*. at 5 (citing to Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012) (the Department required importers and exporters to certify and maintain documents supporting the claim that modules assembled in China from cells produced in a third country did not contain Chinese-made cells).
[41] *Id*. at 6.

producer that did not receive a separate rate in the original investigation, those imports should be assessed at the PRC-wide rate.[42]

U.S. Steel's Comments

U.S. Steel agrees with the Department's position that its final scope rulings were supported by substantial evidence and otherwise in accordance with law and, therefore, that no remand was warranted in this case.[43] Regardless, U.S. Steel agrees that in its Draft Remand Determination, the Department has fully and appropriately complied with the instructions issued by the CIT in its *Opinion*.[44]

With regard to the Department's solicitation of comments related to (i) the manner in which importers should report the percentage of the value of the imported product attributable to unfinished green tubes and (ii) the consequences if they fail to do so, U.S. Steel argues several points. First, rather than relying solely on importers to self-identify OCTG from China that has been finished in third countries prior to importation into the United States, U.S. Steel argues that the Department should instead work closely with CBP to identify and inspect entries of OCTG from countries known or suspected to be engaged in the finishing of OCTG from China.[45] All entries comprising OCTG from China that has been finished in a third country should be subject to cash deposits and administrative reviews, regardless of the merchandise type. Second, importers of OCTG from China that has been finished in a third country should be required to submit (as part of the CBP entry package) a certification signed by the importer attesting to the value, quantity, producer, and specifications of the Chinese OCTG that was finished in the third

[42] *Id*.
[43] *See* U.S. Steel's Comments at 2.
[44] *Id*.
[45] *Id*. at 3.

country.[46] According to U.S. Steel, these certifications should be placed on the record for purposes of respondent selection.

Thirdly, imported OCTG from China that has been finished in a third country for which an importer certification is not provided or cannot be verified should be subject to cash deposits and final duty assessments at the highest AD and CVD rates applicable to producers and exporters of OCTG from China.[47] These AD and CVD rates should be applied to the full price paid by the U.S. purchaser of the OCTG, and not to the price alleged to have been paid by the third country finisher (or another party) at the time that it obtained the unfinished OCTG from China. Further, to ensure an apples-to-apples comparison and accurate determinations of dumping, the Department should use the price paid for the unfinished OCTG from China as the basis for U.S. price and the specifications of the unfinished OCTG from China as the basis for comparisons with normal value. Finally, as part of its normal verification procedures, the Department should verify all information submitted by importers and third-country finishers of OCTG from China.[48]

G. ANALYSIS

Although we respectfully disagree with the CIT that the Department improperly conducted a "substantial transformation" test in this proceeding, we are complying, under protest, with the *Opinion*.[49] The CIT has directed the Department "to identify actual language from the scope of the *Orders* that could be reasonably interpreted to include OCTG finished in third countries."[50] In pertinent part, the *Orders* cover:

[46] *Id*. at 4.
[47] *Id*.
[48] *Id*. at 5.
[49] *See Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).
[50] *See Opinion* at 34.

> {C}ertain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, or iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, ... whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products).[51]

In accordance with the CIT's *Opinion*, we find that the scope language "whether finished . . . or unfinished (including green tubes and limited service OCTG products)" can be reasonably interpreted to include unfinished OCTG from China, regardless of whether there is subsequent finishing in third countries.[52] Unfinished OCTG (including green tubes) from China clearly falls within the physical description of merchandise covered under the *Orders*. Both unfinished OCTG and finished OCTG are in-scope merchandise; that is, they are both "OCTG" within the plain meaning of the scope language. Therefore, contrary to Bell Supply's arguments, the plain language of the scope of the *Orders* expressly covers unfinished Chinese OCTG, and that language can reasonably be interpreted to include unfinished OCTG, even when finished in a third country. The process of finishing does not remove the product from the plain language of the scope, which includes both unfinished and finished OCTG.

Regarding Bell Supply's argument that this position is contrary to the Department's own analysis of this scope language in the Preliminary Scope Determination, we note that the Preliminary Scope Determination was just that—preliminary. We released that preliminary determination and fully evaluated interested parties' comments on that determination when issuing our Final Scope Ruling. Further, our task now is to issue a remand redetermination consistent with the Court's *Opinion*, regardless of what we said in the Preliminary Scope Determination.

[51] *See Orders*.
[52] *See* Draft Remand Determination at 5-6.

We also disagree with Bell Supply's arguments that this finding implicates *all* OCTG, given finished OCTG's origins as unfinished green tube, and renders superfluous scope language referring to "finished" OCTG. The scope's reference to "finished" OCTG indicates that the entirety of the finished product imported from China will be subject to antidumping and countervailing duties. If the scope referred only to unfinished OCTG, we would only impose duties upon the value of that unfinished product as we have done for finished OCTG products imported from third countries under this remand proceeding. Thus, our ruling in this remand proceeding does not negate any of the language of the scope.

Notwithstanding that the plain language of the scope (*i.e.*, "whether finished . . . or unfinished") is clear with regard to unfinished Chinese OCTG and, thus, can reasonably be interpreted to include the product at issue, even when finished in a third country, this remand redetermination is further supported by evaluation of the sources listed in 19 CFR 351.225(k)(1)— the description of the merchandise set forth in the Petitions, the initial investigation, and the determinations of the Secretary and the ITC.[53]

We find that Bell Supply's arguments that the Petitions and ITC Investigation did not intend to cover OCTG that has been heat treated and processed into finished OCTG in a third country are misplaced, and that examining the factors in 19 CFR 351.225(k)(1) resolves any ambiguity in the scope language as to whether the process of third-country finishing would remove the product from the scope. The Petitions included unfinished OCTG (or green tubes) from China as products subject to the investigation.[54] Because our approach in this redetermination would only assess duties on the unfinished portion of the OCTG entering the United States, there is no need under this approach for the Petitions and ITC Investigation to

[53] *Id.*
[54] *See* Letter to the Department, "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Oil Country Tubular Goods from the People's Republic of China," dated April 8, 2009, at page 5.

reference third country processing. Thus, we do not find that the lack of any such discussion in the Petitions and ITC Investigation, or, for that matter, in the final scope language, undermines our position in this remand determination.

Indeed, the (k)(1) sources specifically support our conclusion because there is no dispute that the ITC's injury finding covered both unfinished and finished OCTG, and the ITC's threat analysis included unfinished Chinese OCTG without regard to any third country finishing of that merchandise. Accordingly, our analysis adheres to the plain language of the scope of the *Orders*, as we are properly including within that scope a product for which there was an injury finding.

With regard to the description of the merchandise set forth in the Petitions and investigations, the Petitions described green tubes as the following:

> Green tubes are generally classified as semi-finished pipes used to make casing and tubing products. Like limited-service products, these pipes are typically non-API certified and require further processing to finish the pipe, however, the pipes are normally produced to API specifications. Normally, the further processing requires that the pipes be heat treated (*e.g.*, full length normalized, normalized and tempered, or quenched and tempered). Often green tube is sold to a specific chemistry requirement and is often sold non-graded and non-API certified. However, this is not dispositive as to whether the item is covered by the scope as casing or tubing.[55]

Furthermore, the Petitions clearly stated that "the scope of these petitions includes both finished and unfinished certain OCTG (*i.e.*, semi-finished green tubes). To sell these pipes as finished OCTG they must be further processed through heat-treatment."[56] For this reason, the Department finds that, like the scope language itself, the Petitions support a finding that unfinished Chinese OCTG is covered by the scope of the *Orders* and that the finishing process does not remove the product from the scope.

[55] *See* Letter from Petitioners to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China," dated July 12, 2013 (Petitioners July 12th Scope Rebuttal Comments) at Exhibit 2.
[56] *Id.*

The Department did not explicitly discuss whether unfinished OCTG produced in China but finished in third countries would be subject to the Chinese *Orders* in the course of its investigations. However, the ITC implicitly addressed this question with its analysis of threat of material injury. As part of that analysis, the ITC considered a number of factors, including, *inter alia*, (i) any existing production capacity or imminent, substantial increase in production capacity in China; (ii) inventories of OCTG in China; (iii) exports of both finished and unfinished Chinese OCTG to third countries and the ability of Chinese producers to ship to these third countries in the foreseeable future and to shift their third country exports to the United States; (iv) subsidies provided to Chinese producers with regard to their total production and exports of OCTG; and (v) the potential for product shifting at facilities in China.[57] Among the factual information considered was information on the production facilities, capacity, and inventories of Chinese producers, their exports of finished and unfinished OCTG to the U.S. and third country markets, as well as the subsidies provided to these producers.[58]

The ITC's determination of threat of material injury does not analyze only unfinished merchandise that was shipped directly to the United States. Rather, it was the behavior of Chinese producers with respect to the U.S. market coupled with the fact that Chinese producers possessed the ability to produce and export large quantities of OCTG to the United States, regardless of whether it was actually being exported at the time, which formed the basis of the ITC's finding of threat of material injury.[59] Accordingly, because the ITC's injury determination was an affirmative finding of the threat of material injury that considered the production, capacity, and excess capacity of Chinese producers' ability to make and ship additional OCTG to

[57] *See Certain Oil Country Tubular Goods from China*, Inv. No. 701-TA-463 (Final), USTIC Pub. 4124 (January 2010) (ITC Final Determination) at 10-11 and 16-27.
[58] *Id*. at 10-11 and 19-22.
[59] *See, e.g.*, *id*. at 19 (finding, *inter alia*, that "OCTG producers in China will likely have the ability to increase shipments to the United States to a great extent.").

the United States,[60] it applied to all Chinese-produced OCTG, regardless of whether that OCTG was subject to finishing in third countries. In other words, merchandise shipped to intermediate third countries for processing prior to importation by the United States implicitly was covered by the ITC's threat analysis. The ITC's determination therefore confirms that the scope of the *Orders* can reasonably be interpreted to include unfinished OCTG from China, regardless of where it is finished.

Bell Supply's arguments with respect to the ITC's threat analysis are misplaced. Regardless of how third country imports of OCTG were declared during the investigations, the ITC was considering Chinese *capacity* (emphasis added).[61] We find no reason to believe that the ITC's analysis excluded Chinese capacity to produce green tube that would later be exported to the United States after finishing in third countries. Furthermore, Bell Supply's argument that the ITC included domestic processors as members of the domestic OCTG industry is inapposite. Irrespective of whether or not the ITC considered domestic processors to be members of the domestic OCTG industry, their imports of Chinese green tube are still subject to the *Orders*. Our finding that Chinese green tube processed in third countries is similarly subject to the *Orders* is consistent with that treatment. Thus, we do not consider that inclusion to undermine our analysis.

Additionally, with regard to the ITC Investigation, Bell Supply argues that the Department's interpretation of the ITC's determination is incorrect because the Department did not consider the actual descriptions of the merchandise in that determination. Rather, according to Bell Supply, the Department focused on the basis of the ITC's injury determination (the threat of material injury rather than present material injury). Bell Supply's argument is misplaced. The

[60] *Id*. at 10-11 and 16-27.
[61] *See* ITC Final Determination at pages 16-27.

ITC's determination is ambiguous with respect to actual descriptions of the merchandise beyond the physical characteristics of that merchandise. Consequently, the product description in the ITC's Determination neither adds to nor undermines our findings. As a result, we have looked elsewhere in the ITC Determination for additional context.

H. FINAL RESULTS OF REDETERMINATION AND APPLICATION OF DUTIES

In sum, the plain language of the scope of the *Orders* expressly covers unfinished Chinese OCTG, and, thus, we find that this language can reasonably be interpreted to include unfinished OCTG, even when finished in a third country. The process of finishing does not remove the product from the plain language of the scope, which includes both unfinished and finished OCTG. We also determine that, notwithstanding that the plain language of the scope is clear with regard to unfinished OCTG, the (k)(1) sources, and the ITC's determination specifically, support this conclusion because there is no dispute that the ITC injury finding covered both unfinished and finished OCTG, and the ITC's threat analysis included unfinished Chinese OCTG without regard to any third country finishing of that merchandise. Therefore, our analysis adheres to the plain language of the scope of the *Orders*, as we are properly including within that scope a product for which there was an injury finding. Accordingly, we determine that unfinished OCTG from China, regardless of whether finishing occurs in third countries, is covered by the scope of the *Orders*.

Further, we determine that this finding, made under protest, applies only to unfinished OCTG from China. Therefore, if this remand redetermination is affirmed, we will direct CBP to collect cash deposits and assess antidumping and countervailing duties only on the value attributable to the unfinished OCTG from China, and not on any portion of the value attributable to any finishing performed in third countries. If this remand redetermination is affirmed, we

intend to establish a certification requirement which 1) would require the third country exporter and U.S. importer to maintain in their records a certification that identifies the name of the supplier (and producer if different from the supplier) of the Chinese unfinished OCTG or green tubes, and 2) acknowledge the requirement to maintain records (*e.g.*, invoices for the purchase of unfinished Chinese green tubes) which identify both the Chinese producer and the value of the unfinished OCTG (*e.g.*, green tube) portion of the finished OCTG product that enters the United States. If the certification requirement is put in place, the importer will not be required to submit the certification with the entry, however, it would be required to submit the certification and back-up documentation to CBP upon request by CBP. The exporter would similarly be required to submit the certification and support documentation to the Department upon request.

After our Final Scope Ruling, to ensure that requisite antidumping entries with a declared country of origin for Customs purposes other than the China are and can be properly claimed as subject merchandise, we established certain third-country case numbers in the Case Reference File in CBP's Automated Commercial Environment ADCVD Portal (ACE). For example, we established case number A-357-991 to cover unfinished OCTG produced by Chinese companies and finished in Argentina. In our Final Scope Ruling, we noted that additional countries and corresponding case numbers may be added based on patterns of trade.[62] To implement our final redetermination, we intend to establish supplier/exporter combination rates for each third country case number to reflect a specific Chinese supplier/third-country exporter combination. We also stated in our Final Scope Ruling that if CBP becomes aware of entries of OCTG within the scope of the *Orders* that are being finished and exported from a third-country for which a country-specific case number does not exist, CBP should notify the Department immediately about such

[62] *See* Final Scope Ruling at page 2.

entries and we will establish the appropriate third-country case numbers.[63] We reiterate that request for this final redetermination.

We note that this approach addresses Bell Supply's argument that our determination disregards the condition of the merchandise as imported into the United States because we will direct CBP to collect cash deposits and assess antidumping and countervailing duties only on the value attributable to the unfinished OCTG from China, and not on any portion of the value attributable to any finishing performed in third countries, *i.e.*, on the finished OCTG from a third country.

To the extent Maverick and U.S. Steel argue that the Department should work with CBP to enhance enforcement activities where there are missing or incorrect certifications and with regard to merchandise from countries known or suspected to produce finished OCTG from unfinished OCTG or green tube, we note that the Department coordinates closely with CBP to support CBP's AD/CVD enforcement mission at the border with respect to all AD/CVD proceedings. With regard to arguments that an importer unable to identify the supplier of the unfinished OCTG or the unfinished OCTG's share of the imported finished OCTG's value should pay the PRC-wide antidumping and all others countervailing duty rates on the full value of the imported merchandise, we agree, in part. Specifically, if the importer is unable to identify the original producer of the unfinished OCTG, the PRC-wide antidumping and all others countervailing duty rates would be applicable. However, the rates would continue to be applicable only to the value of the unfinished OCTG's share of the imported finished OCTG's entered value. If the importer is unable to identify the unfinished OCTG's share of the imported finished OCTG's value, but does identify the original producer of the unfinished OCTG, the relevant producer's rate would be applicable to the full value of the imported merchandise. If the

[63] *Id.*

importer is unable to identify both the supplier of the unfinished OCTG and the unfinished OCTG's share of the imported finished OCTG's value, the full value of the finished product will be subject to the PRC-wide antidumping duty rate or the all others countervailing duty rate, as appropriate.

With regard to U.S. Steel's argument that all entries comprising OCTG finished in a third country should be subject to cash deposits and administrative reviews, regardless of the merchandise type, it is Department practice to examine only suspended, *i.e.*, "type three" entries because those are the only entries for which the Department can issue assessment instructions,[64] and, as noted above, any misclassification of such merchandise is subject to investigation and enforcement action by CBP. Accordingly, and notwithstanding Maverick and U.S. Steel's arguments, we find that through the certification requirements and additional case numbers in ACE, CBP can properly collect cash deposits and assess antidumping and countervailing duties as applied only to the value attributable to the unfinished OCTG from China.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

9 NOVEMBER 2015
Date

[64] *See Certain Magnesia Carbon Bricks From the People's Republic of China: Final Results and Final Partial Rescission of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR 19961 (Apr. 14, 2015) and accompanying issues and decision memorandum at Comment 1.