

**FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND**  
*DynaEnergetics U.S. Inc., v. United States*  
Court No. 16-00045, Slip Op. 17-13 (CIT February 7, 2017)

**SUMMARY**

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the remand order of the Court of International Trade (CIT) in *DynaEnergetics U.S. Inc., v. United States*, Court No. 16-00045, Slip Op. 17-13 (February 7, 2017) (*Remand Opinion and Order*). These final remand results concern “Antidumping and Countervailing Duty Orders on Certain Oil Country Tubular Goods from the People’s Republic of China: Final Scope Ruling on DynaEnergetics U.S. Inc.’s Perforating Gun Carriers,” dated February 12, 2016 (Final Scope Ruling). In the *Remand Opinion and Order*, the Court granted the Department’s request for a voluntary remand to reconsider the scope determination and, if appropriate, the customs instructions associated with the scope determination.

As explained below, pursuant to the Court’s *Remand Opinion and Order*, we have reviewed the record, including DynaEnergetics U.S. Inc.’s (DynaEnergetics) arguments and information on the record. Consequently, the Department continues to determine that DynaEnergetics’ gun carrier tubing is within the scope of the *Orders* on oil country tubular goods (OCTG) from the People’s Republic of China (PRC). Additionally, we determine, with respect to the customs instructions associated with our original scope determination, that the instructions the

Department sent to the U.S. Customs and Border Protection (CBP) were not improperly retroactive.

## **BACKGROUND**

On May 21, 2010, the Department published in the *Federal Register* the antidumping and countervailing duty orders on OCTG from the PRC.<sup>1</sup> On September 25, 2015, DynaEnergetics requested that the Department determine whether its gun carrier tubing is outside the scope of the *Orders*. On October 28, 2015, the petitioner, Maverick Tube Corporation (Maverick), filed a letter with the Department requesting a 39-day extension for the issuance of a final scope ruling in order to afford Maverick time to submit comments on the scope request.<sup>2</sup> On November 5, 2015, the Department extended the deadline for a determination in this scope request by 45 days, until December 24, 2015.<sup>3</sup> On December 16, 2015, Maverick submitted comments on DynaEnergetics' scope request.<sup>4</sup> On December 24, 2015, the Department extended the deadline for a determination by an additional 45 days, until February 8, 2016.<sup>5</sup> On January 19, 2016, DynaEnergetics filed comments in rebuttal to the Petitioner Comments.<sup>6</sup> On January 27, 2016, we tolled the deadline for a determination in this scope request due to snowstorm "Jonas."<sup>7</sup>

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<sup>1</sup> 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*).

<sup>2</sup> See Letter from Maverick Tube Corporation, "Certain Oil Country Tubular Goods from the People's Republic of China: Request for Extension of Deadline to Issue a Scope Ruling or Initiate a Formal Scope Inquiry," dated October 28, 2015.

<sup>3</sup> See Letter from the Department to DynaEnergetics, "Certain Oil Country Tubular Good from the People's Republic of China: Extension of Time for Scope Ruling," dated November 5, 2015.

<sup>4</sup> See Letter from Maverick Tube Corporation, "Oil Country Tubular Goods from the People's Republic of China: Comments on DynaEnergetics' Request for a Scope Ruling on Certain Tubing for Perforating Gun Carriers" (Petitioner Comments), dated December 16, 2015.

<sup>5</sup> See Letter from the Department to DynaEnergetics, "Certain Oil Country Tubular Good from the People's Republic of China: Extension of Time for Scope Ruling," dated December 24, 2015.

<sup>6</sup> See Letter from Arent Fox LLP to the Secretary of Commerce, "Certain Oil Country Tubular Good from the People's Republic of China: Response to Maverick's Comments on DynaEnergetics' Request for a Scope Ruling" (Respondent Rebuttal Comments), dated January 19, 2016.

<sup>7</sup> See Memorandum for the Record: "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas,'" dated January 27, 2016.

On February 12, 2016, the Department issued its scope determination on DynaEnergetics’ request regarding gun carrier tubing.<sup>8</sup> In its determination, the Department found the gun carrier tubing to be within the scope of the *Orders*, in accordance with 19 CFR 351.225(k)(1).<sup>9</sup> The Department stated that it found it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2) or the criteria outlined in *Diversified Products*,<sup>10</sup> finding that the description of the product and the scope language were dispositive as to whether or not the product was subject merchandise.<sup>11</sup> The Department noted that the scope of the *Orders* includes “certain OCTG” and that the International Trade Commission (ITC) defined OCTG as “tubular steel products used in oil and gas wells and include casing, tubing, and coupling stock of carbon and alloy steel.”<sup>12</sup> Additionally, the Department found that DynaEnergetics’ gun carrier tubing fit the description of OCTG as it “is a tubular steel product used in the drilling of an oil well.”<sup>13</sup> The Department further stated that record evidence “indicates that mechanical tubing which is OCTG is covered by the scope.”<sup>14</sup> Furthermore, the Department stated that “while gun carrier tubing is not coupling stock, it is OCTG regardless of whether it is or is not mechanical tubing.”<sup>15</sup>

On March 11, 2016, DynaEnergetics filed a motion for judgment on the agency record before the CIT, challenging the Department’s findings. The Court issued the *Remand Opinion and Order* on February 7, 2017. In its *Remand Opinion and Order*, the Court granted our request for

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<sup>8</sup> See “Antidumping and Countervailing Duty Orders on Certain Oil Country Tubular Goods from the People’s Republic of China: Final Scope Ruling on DynaEnergetics U.S. Inc.’s Perforating Gun Carriers” (Final Scope Ruling), dated February 12, 2016.

<sup>9</sup> *Id.*, 10 – 13.

<sup>10</sup> See *Diversified Products Corp. v. United States*, 575 F. Supp. 883, 889 (Ct. Int’l Trade 1983) (*Diversified Products*).

<sup>11</sup> See Final Scope Ruling at 10.

<sup>12</sup> *Id.*, at 11.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, at 12.

<sup>15</sup> *Id.*, at 12-13.

voluntary remand. The Court noted that DynaEnergetics alleged that the Department should have initiated a scope inquiry and performed an analysis under 19 CFR 351.225(k)(2), and that the Department allegedly issued instructions to CBP which had a retroactive effect that is contrary to law.<sup>16</sup> The Court further noted that the Department requested a remand, and that the Department stated that its original analysis was cursory and did not fully address the arguments put forward by DynaEnergetics.<sup>17</sup> Despite Maverick’s opposition to the request by the Department,<sup>18</sup> the Court granted the Department’s request. Specifically, the Court agreed with the Department’s claim that finality would be furthered by the granting of the request for a remand, so that the Department could fully consider all the arguments put forward by DynaEnergetics in the administrative proceeding.<sup>19</sup>

On May 2, 2017, the Department issued a draft redetermination.<sup>20</sup> On May 17, 2017, we received comments from DynaEnergetics.<sup>21</sup> On May 24, 2017, we received rebuttal comments from Maverick.<sup>22</sup>

In accordance with the Court’s instructions, the Department has revisited its analysis as applied to the Final Scope Ruling. In the “Analysis” section below, the Department has provided the Court with a more thorough explanation and clarification of our continued determination that DynaEnergetics’ gun carrier tubing is within the scope of the *Orders*.

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<sup>16</sup> See *Remand Opinion and Order* at 6-7.

<sup>17</sup> *Id.*

<sup>18</sup> See *Remand Opinion and Order* at 2.

<sup>19</sup> *Id.*, at 8.

<sup>20</sup> See “Draft Results of Redetermination Pursuant To Court Remand; Certain Oil Country Tubular Goods from the People’s Republic of China,” released on May 2, 2017 (Draft Redetermination).

<sup>21</sup> See Letter from DynaEnergetics to the Secretary of Commerce, “*Certain Oil Country Tubular Goods from the People’s Republic of China; DynaEnergetics U.S. Inc., v. United States*, Court No. 16-00045; Slip Op. 17-13 (CIT February 7, 2017): Plaintiff’s Comments on the Draft Results of Redetermination Pursuant to Court Order,” dated May 17, 2017 (DynaEnergetics Draft Comments).

<sup>22</sup> See “*Oil Country Tubular Goods from the People’s Republic of China: Rebuttal Comments on Draft Remand Results Pursuant to Court Order in DynaEnergetics U.S. Inc. v. United States*, Court No. 16-00045, Slip Op. 17-13 (Ct. Int’l Trade Feb. 7, 2017),” dated May 24, 2017 (Petitioner Rebuttal Comments).

## SCOPE OF THE ORDERS

The current scope description as published in both *Orders* states:

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), 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.

## **LEGAL FRAMEWORK**

“Scope orders are ‘interpreted with the aid of the . . . petition, the factual findings and legal conclusions adduced from the administrative investigations, and the preliminary order.’ Thus, review of the petition and the investigation 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 determine the scope of the final order. Thus, a predicate for the interpretive process is language in the order that is subject to interpretation.”<sup>23</sup>

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 petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC.<sup>24</sup> Such scope determinations may take place with or without a

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<sup>23</sup> See *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)) (*Duferco Steel*).

<sup>24</sup> See 19 CFR 351.225(d) and 351.225(k)(1).

formal inquiry.<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> 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.

## COMMENTS FROM INTERESTED PARTIES

### DynaEnergetics Comments

DynaEnergetics argues that the Department’s Draft Redetermination proposes “a scope interpretation that is novel, overly broad, lacking in meaningful analysis and ultimately un-useable.”<sup>28</sup> DynaEnergetics asserts that the Department’s Draft Redetermination finds that all hollow steel products of circular cross-section which are used in oil and gas wells are OCTG, and that the scope of the *Orders* cannot be interpreted to cover such a broad range of products.<sup>29</sup> Indeed, DynaEnergetics further argues that the record of the ITC investigation “makes clear that the ITC has never interpreted OCTG in such an expansive manner.”<sup>30</sup>

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<sup>25</sup> See 19 CFR 351.225(d) and 351.225(e).

<sup>26</sup> See 19 CFR 351.225(d).

<sup>27</sup> See *Diversified Products Corp. v. United States*, 572 F. Supp. 883 (CIT 1983) (*Diversified Products*).

<sup>28</sup> See DynaEnergetics Draft Comments at 3.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

With respect to the language on OCTG in the ITC's report, DynaEnergetics claims that the Department attempts to present the definition of OCTG as a choice between a definition provided by the ITC and a definition provided by the American Iron and Steel Institute (AISI), and that the Department chose the ITC definition over the AISI definition.<sup>31</sup> DynaEnergetics states that both definitions were, instead, incorporated into the ITC's final report.<sup>32</sup> Specifically, DynaEnergetics asserts that the ITC's definition of OCTG is that "OCTG are steel pipes and tubes used in the drilling of oil and gas wells and in the conveying of oil and gas from within the well to ground level."<sup>33</sup> DynaEnergetics states that this definition has been adopted by the ITC for other antidumping duty orders on OCTG from other countries.<sup>34</sup>

DynaEnergetics argues that the definition adopted by the Department, in contrast, is partial and misleading.<sup>35</sup> According to DynaEnergetics, the complete description of OCTG for the *Orders* includes casing, tubing, and coupling stock only.<sup>36</sup> Indeed, DynaEnergetics avers that if the definition of OCTG were "meant to cover any other products, they would have been identified by name, if not described to the same level of detail as casing, tubing, and coupling stock were described by the ITC."<sup>37</sup> Additionally, DynaEnergetics argues that the scope of the *Orders* cannot be interpreted to include all hollow steel products of circular cross section used in an oil well, because if that were true, then there would have been no need for the ITC specifically to add coupling stock to the final scope.<sup>38</sup> Thus, the specific inclusion of coupling stock in the final scope indicates that the scope is not as clear as the Department indicates in the Draft

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<sup>31</sup> *Id.*, at 4.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*, citing to *Certain Oil Country Tubular Goods from China*, Inv. No. 701-TA-463 (Final), ITC Pub. No. 4124 (January 2010) at I-9 (ITC Final Determination).

<sup>34</sup> See DynaEnergetics Draft Comments at 4-5.

<sup>35</sup> *Id.*, at 5-6.

<sup>36</sup> *Id.*, at 6.

<sup>37</sup> *Id.*, at 7.

<sup>38</sup> *Id.*

Redetermination.<sup>39</sup> DynaEnergetics contrasts the inclusion of coupling stock with the exclusion of coupling blanks and couplings, which the ITC determined were specifically outside of the scope of the *Orders*, stating that the ITC understood the scope to be limited to casing, tubing, and coupling stock only.<sup>40</sup>

Moreover, DynaEnergetics believes that the record of the ITC investigation shows that only casing, tubing, and coupling stock, were the products covered by the investigation.<sup>41</sup> For this reason, DynaEnergetics contends that the scope of the *Orders* cannot be interpreted to cover all hollow steel products of circular cross-section used in oil and gas wells.

DynaEnergetics also argues that the Department's finding in the Draft Redetermination is inconsistent with its recent decision in *Bell Supply Company, LLC v. United States*<sup>42</sup> (*Bell Supply*).<sup>43</sup> Specifically, DynaEnergetics states that the decision in *Bell Supply* hinged on a definition of OCTG "intended to be used in the extraction of oil and gas" and that such a definition is in conflict with both the ITC's definition as well as the definition proffered by the Department in the Draft Redetermination.<sup>44</sup>

DynaEnergetics avers that the Department failed to consider the physical characteristics of gun carrier tubing, or consider that the tubing is the component of another device.<sup>45</sup> Specifically, DynaEnergetics states that gun carrier tubing is never used as a stand-alone pipe or tube but, instead, is used as part of a perforating gun.<sup>46</sup> Thus, according to DynaEnergetics, the product is not destined for an oil or gas well as tubing or part of a tubing string but instead for further

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*, at 7-8.

<sup>41</sup> *Id.*, at 8.

<sup>42</sup> See Final Results of Second Redetermination Pursuant to Remand, *Bell Supply Company, LLC v. United States*, Consol. Court No. 14-00066, Slip Op. 16-41 (CIT April 27, 2016).

<sup>43</sup> See DynaEnergetics Draft Comments at 10.

<sup>44</sup> *Id.*, at 10-11.

<sup>45</sup> *Id.*, at 11.

<sup>46</sup> *Id.*

processing by an original equipment manufacturer.<sup>47</sup> DynaEnergetics also states that, rather than remaining in a well, the gun carrier tubing is removed from the well once it is used.<sup>48</sup> As DynaEnergetics also performs other processing on the gun carrier tubing, DynaEnergetics believes that said tubing “is neither commercially nor physically intended to be used in an oil well as such.”<sup>49</sup>

DynaEnergetics argues that the Department, under 19 CFR 351.225(k)(1), must evaluate not only the language of the scope, but also must consider the description of the product in the petition and the initial investigation.<sup>50</sup> DynaEnergetics contends that the Department’s finding in the Draft Redetermination fails to account for the reason behind the change in the scope from the original petition to the institution of the *Orders*, and states that the change was only to cover coupling stock.<sup>51</sup> DynaEnergetics also notes that the original petition stated that the scope covered “only oil well casing and tubing,” and that while the final scope removed the word “only” it is clear from the record of the initiation and the investigation that petitioners intended the scope to include only casing, tubing, and coupling stock.<sup>52</sup> DynaEnergetics avers that the Department must consider what DynaEnergetics considers are the following facts: that the original petition only covered casing and tubing, that petitioners stated that they only wanted casing and tubing covered, that petitioners added coupling stock to the scope at the suggestion of the Department, that adding coupling stock would include an HTSUS subheading that includes mechanical tubing that is not OCTG, and that the Department removed the word “only” for grammatical reasons.<sup>53</sup>

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<sup>47</sup> *Id.*, at 11-12.

<sup>48</sup> *Id.*, at 12.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*, at 13.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*, at 13-15.

<sup>53</sup> *Id.*, at 15.

With respect to mechanical tubing, DynaEnergetics contends that the Department’s discussion in the Draft Redetermination regarding the differences between mechanical tubing and OCTG is “tortured” and “circular.”<sup>54</sup> Specifically, DynaEnergetics asserts that the Department’s finding that OCTG is not mechanical tubing, and that the Department can determine what is or is not OCTG, is unsupported and that the Department’s reasoning conflates mechanical tubing and OCTG.<sup>55</sup> DynaEnergetics cites the specifications for its gun carrier tubing, and notes that the specifications exceed those of mechanical tubing based on the ASTM A-519 specification.<sup>56</sup> DynaEnergetics further contends that the language in the scope which reads “whether or not conforming to an API or non-API specifications” was intended to address limited service OCTG and OCTG green tubes, neither of which meet the API 5 CT specification which is standard for OCTG.<sup>57</sup> With respect to the specifications and properties of the gun carrier tubing, DynaEnergetics states that the Department has disclaimed all of the information presented that gun carrier tubing is not used in the same applications as OCTG, and that such dismissal is not consistent with the Department’s obligation to provide an analysis supported by substantial evidence.<sup>58</sup> DynaEnergetics claims that the Department has “failed to explain why those fact are irrelevant to its scope determination” and that the Department has not attempted to define the difference between mechanical tubing and OCTG.<sup>59</sup>

Finally, DynaEnergetics states that the record evidence indicates that gun carrier tubing is mechanical tubing.<sup>60</sup> Citing to *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 720 (Fed. Cir. 1997), DynaEnergetics further states that the standard for substantial evidence requires more

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<sup>54</sup> *Id.*, at 16.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*, at 17.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*, at 18.

<sup>60</sup> *Id.*

than mere assertion of evidence to justify a finding without also considering contradictory or conflicting evidence.<sup>61</sup> Again, DynaEnergetics believes that a consideration of all record evidence will lead to a finding that gun carrier tubing is outside the scope of the *Orders*.

As to the question of the CBP instructions, DynaEnergetics argues that the scope language was not clear and that the Department's determination in the Draft Redetermination constitutes a new definition of OCTG.<sup>62</sup> DynaEnergetics notes that CPB instructions cannot be retroactive when the Department clarifies the unclear scope of an existing order.<sup>63</sup> DynaEnergetics strongly disagrees with the Department's finding that the original scope language was clear, and contends that the Department relied on a completely new definition of OCTG to make its determination.<sup>64</sup> DynaEnergetics asserts that the Department's request for a voluntary remand indicates that the scope of the *Orders* was not clear.<sup>65</sup> DynaEnergetics also claims that the Department amended and clarified its original scope determination in the Draft Redetermination, specifically that the Department originally conflated OCTG and mechanical tubing but now separated the two.<sup>66</sup> These actions, according to DynaEnergetics, indicate that the scope language was unclear.<sup>67</sup>

Citing to *United Steel and Fasteners, Inc. v. United States*, 203 F. Supp. 3d 1235, 1255 (Ct. Int'l Trade 2017) (*United Steel*), DynaEnergetics argues that its request that CBP instructions not be retroactive is supported by precedent. Specifically, quoting *United Steel*, DynaEnergetics states that the conduct of a scope inquiry under 19 CFR 351.225(k)(1) "does not relieve the Department of its obligation to comply with its regulations concerning the effective date for suspending liquidation because the final scope ruling clarified the scope of an ambiguous

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*, at 18-19.

<sup>63</sup> *Id.*, at 19.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

order.”<sup>68</sup> DynaEnergetics reiterates that the scope language of the *Orders* is unclear and, thus, the CBP instructions should not be retroactive.<sup>69</sup> In the alternative, DynaEnergetics argues that the Department should consider the factors under 19 CFR 351.225(k)(2), and issue CBP instructions consistent with that regulation.<sup>70</sup>

### **Petitioner Rebuttal Comments**

Citing to *Duferco Steel*, the petitioner notes that the Department enjoys substantial freedom to interpret and clarify the scope of its orders and that the language in the scope of an order is subject to interpretation.<sup>71</sup> Moreover, citing *Novosteel SA v. United States*, 284 F.3d 1261, 1269 (Fed. Cir. 2002) (*Novosteel*), the petitioner asserts that the Court of Appeals for the Federal Circuit (CAFC) found that “a petitioner need not circumscribe the entire universe of articles that might possibly fall within the order it seeks” when seeking relief under the antidumping duty statute.<sup>72</sup> Instead, the petitioner states that the CAFC in *Novosteel* found that both the Department and courts have rejected “the proposition that a petition must expressly and specifically identify all the products covered by the order at issue.”<sup>73</sup> This is true, according to the petitioner, because “scope inclusions are written in broad terms, and then specific exclusions are carved out from the general terms.”<sup>74</sup> The petitioner states that, in *Duferco Steel*, the Court found that the Department may find merchandise covered by the scope of an order so long as there is language within the scope that may be “reasonably interpreted” to include such merchandise.<sup>75</sup> Examining the scope language of the *Orders*, the petitioner argues that the

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<sup>68</sup> *Id.*, at 20, citing to *United Steel*.

<sup>69</sup> *Id.*, at 20.

<sup>70</sup> *Id.*

<sup>71</sup> See Petitioner Rebuttal Comments at 2.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*, at 2-3.

<sup>74</sup> *Id.*, at 3, citing to *Power Train Components, Inc. v. United States*, 911 F. Supp. 2d 1338, 1343 (Ct. Int'l Trade 2013).

<sup>75</sup> *Id.*, at 3, citing *Duferco Steel*.

language is broadly inclusive and drafted in general terms that encompass a broad range of OCTG products other than just casing and tubing.<sup>76</sup> Also, the petitioner states that there is no specific exclusion for gun carrier tubing in the scope of the *Orders*.<sup>77</sup> The petitioner states that the ITC’s description of OCTG is also inclusive, and that the Department properly supported its finding that tubular steel products used in oil and gas wells need not be classified as tubing, casing, or coupling stock to be covered by the scope of the *Orders*.<sup>78</sup>

The petitioner takes issue with DynaEnergetics claim that the Department “disavowed” the AISI description of OCTG, stating that the Department instead found the ITC’s description of OCTG to be “more relevant” to the current scope inquiry.<sup>79</sup> The petitioner states that the oil and gas industry has evolved a great deal since the original AISI definition in 1982.<sup>80</sup>

The petitioner takes issue with DynaEnergetics’ argument that the Department’s finding in the Draft Redetermination is unreasonable because gun carrier tubing was not specifically mentioned in the scope or examined during the ITC investigation, stating that such logic would indicate that a petitioner would have to reference every specific product that a scope should cover.<sup>81</sup> Again citing *Novosteel*, the petitioner states that such a supposition has been rejected by the CAFC.<sup>82</sup> With respect to the addition of coupling stock in the final scope, the petitioner states that “the fact that a petitioner or the Department may have sought to clarify the coverage of one specific product during the investigation cannot automatically result in the exclusion of every other product that was not specifically included” in the scope.<sup>83</sup> Thus, argues the

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<sup>76</sup> *Id.*, at 3-4.

<sup>77</sup> *Id.*, at 4.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*, at 4-5.

<sup>80</sup> *Id.*, at 5.

<sup>81</sup> *Id.*, at 5-6.

<sup>82</sup> *Id.*, at 6.

<sup>83</sup> *Id.*

petitioner, the fact that gun carrier tubing was not included in the ITC's injury investigation is of no moment.<sup>84</sup> Indeed, according to the petitioner, the ITC does not need to investigate every possible variant of a product that is covered by a scope.<sup>85</sup>

The petitioner further argues that the removal of the word "only" from the language of the scope was not a grammatical edit as DynaEnergetics argues, but instead was an intentional and substantive edit which reflected the intention to expand the scope to the full range of OCTG products which were not otherwise specifically excluded.<sup>86</sup> Had the petitioner and the Department wished to limit the scope to casing, tubing, and coupling stock, petitioner asserts that the revised scope would have reflected this intention.<sup>87</sup> The petitioner avers that coupling stock is but one product that may have been unintentionally left out of the scope's coverage but for the revision discussed which removed the word "only" from the scope.<sup>88</sup> Given the final language of the scope, the petitioner believes the Department must interpret the scope language as written and not based on DynaEnergetics' assertion.<sup>89</sup> Given the language of the scope, the petitioner argues that the Department's interpretation of "certain OCTG" to mean a "tubular steel product used in oil and gas wells" is reasonable.<sup>90</sup>

The petitioner states that, based on the interpretation it outlined, gun carrier tubing is in-scope merchandise as it is a tubular steel product used in oil and gas wells.<sup>91</sup> With respect to DynaEnergetics' argument that gun carrier tubing is not OCTG because it "is never used in an oil well directly, as a stand-alone pipe or tube," the petitioner argues that DynaEnergetics has

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<sup>84</sup> *Id.*, at 6-7.

<sup>85</sup> *Id.*, at 7, citing *AL Patterson, Inc. v. United States*, 585 Fed. Appx. 778, 785 (Fed. Cir. 2014)

<sup>86</sup> *Id.*, at 7.

<sup>87</sup> *Id.*, at 8.

<sup>88</sup> *Id.*, at 7.

<sup>89</sup> *Id.*, at 8.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

offered no support for this assertion in either the scope language or the (k)(1) factors that indicate this is a distinguishing characteristic.<sup>92</sup> The petitioner notes that, while drill pipe is explicitly excluded from the scope of the *Orders*, it is indisputably OCTG that does not remain in the well after the drilling process.<sup>93</sup> Concerning DynaEnergetics' arguments that gun carrier tubing is involved in neither the "drilling" nor the "extraction" applications, the petitioner states that this is irrelevant to the definition of OCTG as a tubular steel product which is "used in" oil and gas wells.<sup>94</sup> Indeed, the petitioner argues that the distinction proffered by DynaEnergetics is arbitrary, as the completion of a well through perforation is a necessary element of drilling and extraction.<sup>95</sup> Nevertheless, the petitioner argues that the perforation is essentially the final stage of the drilling of the well, and notes that the ITC report includes a diagram describing the drilling process that includes the discussion of the use of a perforating gun.<sup>96</sup> Thus, according to the petitioner, the argument that gun carrier tubing is not used in an oil well directly is factually incorrect.<sup>97</sup>

As for DynaEnergetics' argument that the Department is incorrect in determining if a product is OCTG because it says it is OCTG, the petitioner argues that, in fact, the Department has the authority in fact to make such an interpretation.<sup>98</sup> The petitioner asserts, in opposition, that the Department in fact cannot find a product outside of the scope of the *Orders* simply because an importer states that the product is not OCTG but mechanical tubing.<sup>99</sup> Also, the petitioner argues that gun carrier tubing that is produced to a mechanical tubing specification is not automatically

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*, at 9.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*, at 9-10.

<sup>97</sup> *Id.*, at 10.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

excluded from the scope of the *Orders*, especially as the language of the scope specifically states that OCTG covered by the scope may or may not conform to the API specifications.<sup>100</sup> The petitioner reiterates its argument that the language of the scope is intentionally broad and inclusive and, thus, is not limited to casing, tubing, and coupling stock, as DynaEnergetics suggests.<sup>101</sup> In fact, according to the petitioner, while DynaEnergetics argues that the Department has ignored the physical characteristics of gun carrier tubing, the petitioner believes that the Department has addressed the arguments.<sup>102</sup> The petitioner argues that DynaEnergetics' focus on the fact that gun carrier tubing is produced according to a non-API specification ignores the plain language of the scope, which is meant to be inclusive and not limited to API specifications.<sup>103</sup>

With respect to the CBP instructions, the petitioner argues that the Department's original instructions are correct. Citing to *Shenyang Yuanda Aluminum v. United States*, 961 F. Supp. 2d 1291, 1304 (Ct. Int'l Trade 2014), the petitioner asserts that the Department has not acted beyond its authority as the language of the scope and the (k)(1) factors are dispositive.<sup>104</sup>

## **ANALYSIS**

In our Final Scope Ruling, we referenced the scope of the *Orders*, which states in part:

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

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<sup>100</sup> *Id.*, at 10-11.

<sup>101</sup> *Id.*, at 11.

<sup>102</sup> *Id.*, at 12.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*, at 12-13.

specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), 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.<sup>105</sup>

We further stated that “{t}he scope of the order includes ‘certain OCTG’ and all language thereafter is predicated on the merchandise being OCTG.”<sup>106</sup> Thus, our analysis in the Scope Ruling focused on the definition of OCTG, and whether DynaEnergetics’ gun carrier tubing was or was not OCTG, and whether or not the gun carrier tubing fell within one of the exclusions. Indeed, DynaEnergetics states that “the foremost prerequisite for pipe and tube to be covered by the scope is its identification as OCTG.”<sup>107</sup> However, our determination did not include a complete analysis of all of the information on the record or certain responses to DynaEnergetics’ arguments. As set forth below, we continue to determine that DynaEnergetics’ gun carrier tubing is within the scope of the *Orders* using the analysis under 19 CFR 351.225(k)(1). We, thus, find that an analysis under 19 CFR 351.225(k)(2) is unnecessary. Additionally, we will address below DynaEnergetics’ arguments regarding our instructions to CBP. We disagree with DynaEnergetics that the CBP instructions that we issued were improperly retroactive.

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<sup>105</sup> See “Antidumping and Countervailing Duty Orders on Certain Oil Country Tubular Goods from the People’s Republic of China: Final Scope Ruling on DynaEnergetics U.S. Inc.’s Perforating Gun Carriers,” dated February 12, 2016 (Scope Ruling) at 10.

<sup>106</sup> *Id.*, at 11.

<sup>107</sup> *Id.*, at 9.

In its request for a scope ruling,<sup>108</sup> DynaEnergetics included definitions of OCTG from both the ITC<sup>109</sup> and the AISI.<sup>110</sup> As we noted in our Scope Ruling,<sup>111</sup> the ITC states that “OCTG are tubular steel products used in oil and gas wells and include casing, tubing, and coupling stock of carbon and alloy steel.”<sup>112</sup> The AISI describes OCTG as “a collective term applied to the drill pipe, casing and tubing used in the drilling of a well and conveying the oil or gas products to the surface.”<sup>113</sup> The AISI description indicates that drill pipe, casing, and tubing, which are used in the drilling of a well and conveying of oil or gas to the surface, are OCTG. However, the description does not expressly preclude other “hollow steel products of circular cross-section” from being OCTG. Indeed, the ITC’s definition recognizes this fact by stating that OCTG are: 1) “tubular steel products used in oil and gas wells and” 2) “*include* casing, tubing, and coupling stock of carbon and alloy steel” (emphasis added). To put it another way, a tubular steel product used in oil and gas wells need not be classified as tubing, casing, or coupling stock, to be considered as OCTG covered by the scope of the *Orders*. So long as it is not a tubular steel product expressly excluded from the scope of the *Orders* (*i.e.*, casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors), it may be another tubular steel product used in oil and gas wells and, therefore, can be classified as OCTG. Moreover, the ITC Final Determination also states, “Recent advancements in oil and gas exploration technologies, including horizontal drilling and hydraulic fracture, have enabled gas wells to reach locations that were previously deemed cost

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<sup>108</sup> See Letter from DynaEnergetics to the Secretary of Commerce, “Certain Oil Country Tubular Good from the People’s Republic of China: Request for a Scope Ruling on Certain Tubing for Perforating Gun Carriers” (Scope Ruling Request), dated September 25, 2015.

<sup>109</sup> See Scope Ruling Request at Exhibit 9.

<sup>110</sup> *Id.*, at Exhibit 8.

<sup>111</sup> See Scope Ruling at 11.

<sup>112</sup> See *Certain Oil Country Tubular Goods from China*, Inv. No. 701-TA-463 (Final), ITC Pub. No. 4124 (January 2010) (ITC Final Determination) at II.B. (page 5), and Scope Ruling Request at Exhibit 9.

<sup>113</sup> See Scope Ruling Request at Exhibit 8.

prohibitive.”<sup>114</sup> In light of these recent technological advancements, we find the ITC’s definition more relevant to the present determination than the definition provided in the referenced AISI Steel Products Manual, which was published in 1982.<sup>115</sup>

DynaEnergetics states that its gun carrier tubing is part of a perforating system.<sup>116</sup> Such perforating systems are, according to DynaEnergetics, “used to perforate existing oil and gas wells in preparation for production.”<sup>117</sup> DynaEnergetics also states that the merchandise subject to the scope request is a seamless mechanical tube.<sup>118</sup> Therefore, DynaEnergetics contends, its gun carrier tubing is not within the definition of OCTG such that it would be subject to the *Orders*.<sup>119</sup> However, as DynaEnergetics’ own descriptions indicate, the gun carrier tubing is a tubular steel product used in oil and gas wells, which, therefore, comports to the language used by the ITC to define OCTG. More importantly, the description of DynaEnergetics’ gun carrier tubing fits within the language in the scope of the *Orders*, which describes “certain OCTG” to be “hollow steel products of circular cross-section . . . 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).” As noted above, the scope language covers, but is not exclusive to, oil well casing and tubing. Thus, the fact that DynaEnergetics’ gun carrier tubing is part of a perforating system does not preclude the gun carrier tubing from meeting the definition of OCTG such that it is covered by the scope of the *Orders*. Despite DynaEnergetics description of its gun carrier tubing as “a seamless mechanical tube,” if the tubing is a hollow steel product of circular cross-section used in an oil or gas well, and does not fall under one of

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<sup>114</sup> ITC Final Determination at I-10

<sup>115</sup> *See* Scope Ruling Request at Exhibit 8.

<sup>116</sup> *Id.*, at 4.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*, and Exhibit 3.

<sup>119</sup> *Id.*, at 8.

the exclusions in the scope of the *Orders*, then, for our purposes it is classified as OCTG and covered by the scope of the *Orders*.

DynaEnergetics states that the gun carrier tubing in question has enhanced chemistry and mechanical characteristics.<sup>120</sup> These characteristics include the use of steel grade 30CrMo, which DynaEnergetics indicates is similar to the steel grade 4130 under the ASTM A-519 standard.<sup>121</sup> DynaEnergetics also states that its gun carrier tubing conforms to more stringent tolerances, and that it has higher requirements for yield strength, hardness and charpy impact, than OCTG.<sup>122</sup> The gun carrier tubing must survive a test unique to gun carriers, and has a special design and purpose, according to DynaEnergetics.<sup>123</sup> Thus, according to DynaEnergetics, the gun carrier tubing is a custom-designed product, in contrast to the standardized nature of OCTG casing and tubing, such as pipe made to the ASTM API 5-CT specification.<sup>124</sup>

The scope of the *Orders* states that “certain OCTG” is covered under the scope “whether or not conforming to API or non-API specifications.” Thus, whether gun carrier tubing conforms to an API or ASTM specification associated with OCTG is not determinative of whether gun carrier tubing is covered by the scope. Additionally, the scope of the *Orders* is not dependent upon the chemical composition of the merchandise, other than to exclude casing and tubing containing 10.5 percent or more by weight of chromium. Therefore, the chemical composition and mechanical characteristics of DynaEnergetics’ gun carrier tubing are not indicative that the merchandise in question is excluded from the scope of the *Orders*. On the contrary, the fact that the scope covers OCTG regardless of conformity with API or non-API specifications and

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<sup>120</sup> *Id.*, at 5-6.

<sup>121</sup> *Id.*, at 5, and Exhibit 14. For a description of the ASTM A-519 standard, *see* Exhibit 6. For a discussion of the chemical composition of the steel used for the gun carrier tubing, *see* Exhibit 3.

<sup>122</sup> *Id.*, at 6, and Exhibit 14.

<sup>123</sup> *Id.*, at 6, and Exhibit 12.

<sup>124</sup> *Id.*, at 6.

regardless of chemical composition, except for certain levels of chromium content, indicates an intent to foreclose precisely the arguments DynaEnergetics raises—namely, that the enhanced chemical and mechanical characteristics of its merchandise should somehow exclude the merchandise from a scope that expressly does not consider chemical or mechanical characteristics.

DynaEnergetics indicates that the gun carrier tubing that it imports enters into the United States under the Harmonized Tariff System of the United States (HTSUS) subheading 7304.59.8020.<sup>125</sup> DynaEnergetics states that this HTSUS subheading is a basket category tariff classification which covers both OCTG coupling stock and mechanical tubing.<sup>126</sup> DynaEnergetics also states that “Petitioners noted this fact and cautioned that certain tariff classifications are broad and include mechanical tubing that is not OCTG subject to the investigations.”<sup>127</sup> Furthermore, DynaEnergetics quotes a letter from the petitioners to the Department and to the ITC stating that this HTSUS subheading “will include other types of mechanical tubing that are not coupling stock.”<sup>128</sup> DynaEnergetics then claims that its gun carrier tubing “does not meet the description for OCTG coupling stock.”<sup>129</sup> As an initial matter, and as DynaEnergetics notes, HTSUS numbers are provided for convenience and customs purposes, but the written description of the merchandise is dispositive. Thus, insofar as DynaEnergetics’ arguments rely on the tariff classification of its merchandise, we find them unavailing. The fact that the gun carrier tubing enters under a basket category tariff

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<sup>125</sup> *Id.*, at 7.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*, referencing Letter from the Petitioners to the U.S. Department of Commerce and the U.S. International Trade Commission regarding *OCTG from the People's Republic of China: Response to the Department's Questionnaire Regarding Volume I of the Petitions* (April 22, 2009) at 3. The referenced letter is the petition. DynaEnergetics has included a copy of portions of the petition in Exhibit 11 of the Scope Clarification Request.

<sup>129</sup> *Id.*, at 7.

classification that includes OCTG coupling stock and mechanical tubing does not mean that DynaEnergetics gun carrier tubing *must be* either coupling stock or mechanical tubing. On the contrary, as a basket category, the HTSUS 7304.59.8020 tariff classification could include a broad range of pipes or tubes that do not fit neatly into a more specific HTSUS subheading. However, the fact that certain piping or tubing falls within this basket category does not preclude it from meeting the definition of OCTG, such that it is subject to the *Orders*, if it is a tubular steel product used in oil or gas wells. Thus, the relevant question is not whether DynaEnergetics' gun carrier tubing is coupling stock, but, rather, whether the gun carrier tubing is OCTG covered by the scope of the *Orders*. While coupling stock is expressly covered by the scope of the *Orders*, the basis for finding that DynaEnergetics' gun carrier tubing is within the scope of the *Orders* is not that the gun carrier tubing is coupling stock, but that the gun carrier tubing falls within the definition of OCTG as provided for in the scope language. Thus, DynaEnergetics' gun carrier tubing meets the scope's definition of OCTG.

DynaEnergetics further states that mechanical tubing is not covered by the scope of the *Orders*, and that its gun carrier tubing is mechanical tubing.<sup>130</sup> We will address each of these arguments separately.

DynaEnergetics states that mechanical tubing does not appear in the scope language of the *Orders* and repeats the AISI definition of OCTG to indicate that the focus of the scope is on OCTG, not mechanical tubing.<sup>131</sup> DynaEnergetics attempts to use the AISI definition to narrow the definition of OCTG as defined by the scope to include only tubing, casing, and drill pipe.<sup>132</sup>

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<sup>130</sup> *Id.*, at 8-14.

<sup>131</sup> *Id.*, at 8-9.

<sup>132</sup> *Id.*, at 9-10. Indeed, while DynaEnergetics states that “the foremost prerequisite for pipe and tube to be covered by the scope is its identification as OCTG,” all of the language that follows those first words modifies the operative word “OCTG.” DynaEnergetics attempts to define “OCTG” narrowly in the previous sentence by stating that OCTG “are described to include casing and tubing with certain characteristics.” As we have noted, the ITC’s definition of “OCTG” goes beyond tubing and casing.

As noted above, however, the AISI definition, as quoted on page 4, does not fully encompass the definition of OCTG, while the ITC definition more fully encompasses the meaning of “certain OCTG,” as used in the scope of the *Orders*. While DynaEnergetics notes that coupling stock was added to the scope by the Department, it contends that this addition does not result in the inclusion of mechanical tubing in the scope and states that gun carrier tubing is mechanical tubing.<sup>133</sup>

DynaEnergetics states that the original petitions did not define OCTG to include mechanical tubing, and that the petitioners initially confirmed their definition of OCTG to be limited to casing, tubing, and coupling stock. DynaEnergetics references the limiting language from the petitioners’ proposed scope, which reads: “including only oil well casing and tubing.”<sup>134</sup> Whatever the initial scope submitted in the petitions, however, this is not the language of the scope that appeared in the final *Orders*. Had the Department intended to limit the scope and the definition of OCTG to oil well casing and tubing, it could have done so by adopting the language from the petitions that DynaEnergetics references. Instead, the final scope removed the limitation language from the petitions regarding casing and tubing. Thus, for the purposes of this scope determination, the proposed scope language from the original petitions is not determinative and, if anything, actually weighs against reading limitations into the final scope language that are no longer there.

Next, DynaEnergetics asserts that the ITC treated OCTG and mechanical tubing as distinct product categories.<sup>135</sup> DynaEnergetics states that neither the ITC nor the Department defined “OCTG” to include mechanical tubing.<sup>136</sup> Pointing to the Department’s antidumping duty

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<sup>133</sup> *Id.*, at 9.

<sup>134</sup> *Id.*, at 10.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*, at 11, where DynaEnergetics also equates gun carrier tubing with mechanical tubing.

questionnaire, DynaEnergetics states that the criterion “product type” does not include a category for “other,” but only lists the categories for casing, tubing, and coupling stock.<sup>137</sup> Additionally, DynaEnergetics states that the ITC investigation only examined casing, tubing, and coupling stock.<sup>138</sup> DynaEnergetics states that none of the descriptions of casing, tubing, or coupling stock included in the ITC’s investigation apply to gun carrier tubing and that “at no point in these proceedings did Petitioners indicate that such mechanical tubing made to ASTM A-519 is OCTG covered by the investigation.”<sup>139</sup>

With respect to the Department’s antidumping duty questionnaire, the copy provided by DynaEnergetics in Exhibit 13 contains language stating that, if a company believes “there is a reason to report your U.S. sales on a different basis, please contact the official in charge before doing so.”<sup>140</sup> A company responding to the Department’s questionnaire controls its records and is aware of the types of products that it manufactures.<sup>141</sup> If a manufacturer of gun carrier tubing were to receive the questionnaire and believe that its product did not fit within the parameters of the matching criteria, it need only contact the Department for guidance; but lack of a perfect fit with the matching criteria does not allow a party to reach any conclusions about whether its products are covered by the scope of an order.

As to the ITC’s investigation and its examination of casing, tubing, and coupling stock, we again note that the ITC’s definition of OCTG does not indicate that it is limited exclusively to casing, tubing, and coupling stock, even if those were the primary OCTG products examined. An examination of the ITC’s report, portions of which are provided by DynaEnergetics in

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<sup>137</sup> *Id.*, and Exhibit 13.

<sup>138</sup> *Id.*, at 11-12.

<sup>139</sup> *Id.*, at 12.

<sup>140</sup> *Id.*, at Exhibit 13.

<sup>141</sup> See *Zenith Electronics Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993) (“The burden of production should belong to the party in possession of the necessary information.”).

Exhibit 9, shows that the ITC broadly defined mechanical tubing to be “typically a custom-designed product employed within the automotive industry and by equipment manufacturers.”<sup>142</sup> The ITC similarly defined OCTG as “steel pipes and tubes used in the drilling of oil and gas wells and in the conveying of oil and gas from within the well to ground level.”<sup>143</sup> The Department used this definition in its Final Scope Ruling.<sup>144</sup> However, as we have noted above, the ITC elsewhere defined OCTG as “tubular steel products used in oil and gas wells.”<sup>145</sup> Thus, viewed as a whole, the official definition of OCTG provided by the ITC is not limited to merchandise used specifically in drilling or conveying, but encompasses other tubular steel products used in oil and gas wells. That the Department intended to give effect to the latter definition is evidenced by the specific exclusions within the scope language for drill pipe, unattached couplings, and unattached thread protectors. Were the definition of OCTG limited in the way DynaEnergetics suggests, such exclusions would be superfluous. Thus, the Department finds that the ITC’s examination, while focusing primarily on casing, tubing, and coupling stock, does not preclude other circular steel products from being OCTG and, therefore, within the scope of the *Orders*, unless specifically excluded.

DynaEnergetics next states that OCTG and mechanical tubing were treated separately in the investigations.<sup>146</sup> DynaEnergetics asserts that “{i}n general, in the industry, the distinctions between OCTG, mechanical tubing and other pipes and tubes are well-known.”<sup>147</sup>

DynaEnergetics then states that a number of U.S. producers and resellers of OCTG also “advertise mechanical tubing produced to ASTM A-519, as well as tubes for perforating carriers,

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<sup>142</sup> *Id.*, at Exhibit 9, quoting a portion of the ITC report at page I-9, footnote 16.

<sup>143</sup> *Id.*

<sup>144</sup> *See* Final Scope Ruling at 11. DynaEnergetics used this language in its Scope Ruling Request (at 8-9), which quotes in part the definition of OCTG provided by the AISI.

<sup>145</sup> ITC Final Determination at II.B (page 5).

<sup>146</sup> *Id.*, at 12-13.

<sup>147</sup> *Id.*, at 13.

as *separate products from their OCTG products.*”<sup>148</sup> (emphasis added in original submission)

DynaEnergetics goes on to provide examples of what it claims are companies offering mechanical tubing products made to the ASTM A-519 standard for oil and gas use which are separate from OCTG.<sup>149</sup>

We agree that mechanical tubing and OCTG are separate products. In our Final Scope Ruling, we incorrectly conflated OCTG and mechanical tubing. For example, we stated that:

The scope of the *Orders* states that merchandise which is OCTG and otherwise conforms to the physical properties of OCTG is covered “whether or not conforming to API or non-API specifications.” Thus, it is irrelevant whether DynaEnergetics’ merchandise or merchandise otherwise covered by the *Orders*, conforms to a particular API specification or a non-API specification. Additionally, the “mechanical tubing” excluded from the scope of the *Orders* is mechanical tubing which is not OCTG. Evidence on the record indicates that mechanical tubing which is OCTG is covered by the scope. For example, in its discussion of imports under HTSUS 7304.59.8020, DynaEnergetics quotes petitioners during the investigation as stating that “coupling stock is imported either under the OCTG classifications or under the seamless mechanical tubing subheading of the HTSUS” and that the HTSUS sub-heading in question is a “basket category and will include other types of mechanical tubing that are not coupling stock.” From this language, since coupling stock is covered by the scope of the *Orders* and is imported under the HTSUS subheading for mechanical tubing, it is clear that “mechanical tubing” imported under this HTSUS is not automatically excluded from the scope of the *Orders* simply because it was imported under that HTSUS subheading. Thus, while gun carrier

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<sup>148</sup> *Id.*, emphasis original.

<sup>149</sup> *Id.*, at 13.

tubing is not coupling stock, it is OCTG regardless of whether it is or is not mechanical tubing. Finally, we note that information on the record indicates that producers of gun carrier tubing market it as “OCTG mechanical tubing.”<sup>150</sup>

In other words, in our Final Scope Ruling, we indicated that there were types of mechanical tubing that are OCTG. However, in this redetermination, for the purposes of our scope, a product that is within the scope of an order for OCTG is OCTG. While a product which is OCTG might be defined by parties as also being mechanical tubing in, *e.g.*, product brochures, for the purposes of our scope and classification, such a product is OCTG. As our scope makes clear, the determination of whether or not a product is within the scope of the *Orders* does not rest on stenciling, or under which HTSUS number it is imported, or how it is advertised in a product brochure. Instead, the scope includes “certain OCTG,” which is defined as “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), whether or not thread protectors are attached.”<sup>151</sup> By this definition, DynaEnergetics gun carrier tubing is within the scope of the *Orders*.

In granting the Department’s request for a remand, the Court also instructed the Department to reconsider, if appropriate, the Customs instructions associated with the Final Scope Ruling.

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<sup>150</sup> See Final Scope Ruling at 12 (footnotes omitted).

<sup>151</sup> ITC Final Determination at II.B (page 5).

DynaEnergetics argued that “Commerce’s instructions to CBP to continue suspension of liquidation, where such instructions have retroactive effect, were contrary to law.”<sup>152</sup>

Here, the Department found the original scope language was clear. Consistent with this finding, the Department issued the Final Scope Ruling based solely upon the application and the descriptions of the merchandise referred to in 19 CFR 351.225(k)(1), pursuant to 19 CFR 351.225(d). The Department did not determine it was necessary to initiate a scope inquiry or to issue a preliminary scope ruling. As such, and because the Department continues to find DynaEnergetics’ merchandise subject to the *Orders*, the Department will not modify the CBP instructions with respect to DynaEnergetics’ gun carrier tubes.<sup>153</sup>

### **Response to Party Comments**

As an initial matter, we find that both parties untimely submitted new factual information in their comments on the Draft Remand Redetermination. Specifically, Exhibits 5, 6, 8, and 9 of DynaEnergetics’ comments constitute new factual information. Likewise, Exhibit 1 of the petitioner’s rebuttal comments constitutes new factual information. Normally, the Department would reject the comments and rebuttal comments and instruct the parties to re-file them without the untimely new factual information. However, because of the deadline for filing these final remand results with the Court, there is no time for us to accomplish this. Therefore, we are clarifying for the record that we consider the above-listed exhibits to be new factual information, and we are not relying on this information for these final remand results.

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<sup>152</sup> *Remand Opinion and Order* at 7.

<sup>153</sup> See *Shenyang Yuanda Aluminum Industry Engineering Co. v. United States*, 961 F. Supp. 2d 1291, 1304 (Ct. Int’l Trade 2014), *aff’d* 776 F.3d 1351 (“Where, as here, a scope ruling confirms that a product is, and has been, the subject of an order, the Department has not acted beyond its authority by continuing the suspension of liquidation of the product.”).

DynaEnergetics argues at length concerning the proper definition of OCTG, and whether or not its gun carrier tubing comports to any OCTG definition. As noted above, DynaEnergetics argued that the definition of OCTG used by the Department excluded the AISI definition, and that the ITC specifically incorporated the AISI definition into its report. DynaEnergetics gives particular weight to the AISI definition,<sup>154</sup> which defines OCTG as “a collective term applied to the drill pipe, casing and tubing used in the drilling of a well and conveying the oil or gas products to the surface.”<sup>155</sup> Stating that the Department has “disavowed” this definition, and instead relied on a “partial” definition, DynaEnergetics contends that the AISI definition is, nevertheless, the proper definition of OCTG and that the Department’s quotation of the ITC’s definition was “out of context.”<sup>156</sup> Having presented its preferred definition of OCTG, DynaEnergetics then states that gun carrier tubing does not fit within this definition, as it is used neither in drilling nor in conveying oil or gas products to the surface.<sup>157</sup> Indeed, DynaEnergetics states that the Department’s definition of OCTG contradicts the Department’s findings in *Bell Supply*, where OCTG is described as being used for the extraction of oil and gas.<sup>158</sup> Instead, DynaEnergetics argues that gun carrier tubing is for “well completion,” which is distinct from drilling and extraction.<sup>159</sup> However, this logic does not bear scrutiny, and an examination of the record indicates that DynaEnergetics’ arguments are not supported by the record.

First, the AISI definition of OCTG is not separate and distinct from the ITC’s definition, as we have listed. In fact, the ITC’s definition incorporates the AISI definition into it, and broadens the definition to be more inclusive. That is to say, while the AISI definition may only define

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<sup>154</sup> See DynaEnergetics Draft Comments at 3-4.

<sup>155</sup> See Scope Ruling Request at Exhibit 8.

<sup>156</sup> See DynaEnergetics Draft Comments at 4-7.

<sup>157</sup> *Id.*, at 10-11.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

OCTG to include tubular steel products used in drilling and extraction, the ITC's definition defines OCTG to include tubular steel products used in drilling, extraction, and other functions associated with an oil and gas well. These definitions are inclusive, and are not meant to be limited to casing, tubing, and coupling stock. If they were, they would specifically limit the description to these products (as well as drill pipe, which is specifically excluded from the scope of the *Orders* but has been included in other antidumping duty orders on OCTG<sup>160</sup>). The language of either definition is not so limiting, nor is the language of the scope of the *Orders*.

Notwithstanding the inclusive language of the scope, the ITC definition, and the AISI definition, DynaEnergetics' claim that gun carrier tubing is not used in the "drilling" process is not supported by record evidence. The ITC's report includes a diagram which described the drilling process for wells which include hydraulic fracturing. The diagram includes a description of the use of a perforating gun in the drilling process.<sup>161</sup>

However, assuming, *arguendo*, that gun carrier tubing is not used in the drilling process, and that the definition of OCTG is restricted to tubular steel products used only in drilling or extraction, simple common sense would still indicate that gun carrier tubing is, in fact, OCTG, as it is essential to the extraction of oil and gas from a well. DynaEnergetics states that its customers use gun carrier tubing as part of a perforating gun system which is used "to perforate wells in preparation for production."<sup>162</sup> With respect to the perforations, DynaEnergetics also states that "it is through these perforations that oil and gas flows into the well bore and up to the surface"<sup>163</sup> and "all the efforts that go into well completion lead to the defining moment when the

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<sup>160</sup> See, e.g., *Antidumping Duty Order: Oil Country Tubular Goods From Mexico*, 60 FR 41056 (August 11, 1995) (OCTG Mexico Order).

<sup>161</sup> See ITC Final Determination at I-13. A copy of this page is included in Exhibit 9 of the Scope Ruling Request.

<sup>162</sup> See Scope Ruling Request at 2

<sup>163</sup> *Id.*, at 4.

perforating guns punch holes through OCTG casing and rock to connect the oil or gas reservoir to the well.”<sup>164</sup> In other words, without the perforation of the casing, which requires gun carrier tubing, there would be no operational oil and/or gas well.<sup>165</sup> The gun carrier tubing is, therefore, essential to extracting oil and gas from the shale formations which are hydraulically fractured. Thus, DynaEnergetics’ claim that gun carrier tubing, a tubular steel product which is essential for the existence of an operational oil and/or gas well, is not OCTG, defies any commonsense explanation of what an oil country tubular good is.

In this light, DynaEnergetics’ other arguments concerning the definition of OCTG are also without merit. The Department’s definition of OCTG is not, as DynaEnergetics asserts, a partial description of OCTG. In fact, the opposite is true. The Department’s use of the ITC’s definition of OCTG is more complete, as it encompasses the physical description of OCTG and its use in oil and/or gas wells.

DynaEnergetics also argues that if the scope of the *Orders* were meant to cover products besides casing, tubing, and coupling stock, such products would have been identified by name and described by the ITC in its report.<sup>166</sup> However, the CAFC has stated that a petitioner need not circumscribe the entire universe of articles that might possibly fall within the order it seeks.<sup>167</sup> Thus, the absence of an explicit listing of gun carrier tubing in the petition, or the ITC’s investigation, does not preclude gun carrier tubing from inclusion in the scope of the *Orders*. The question is not whether the scope language, petition or ITC investigation expressly mentions the particular article in question, but whether the descriptions of the covered product in

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<sup>164</sup> *Id.*, at 5.

<sup>165</sup> Indeed, the Scope Ruling Request at Exhibit 17 states that “Perforating has been a key component of well completions since the introduction of oil well cementing in the 1920’s.”

<sup>166</sup> See DynaEnergetics Draft Comments at 6-7.

<sup>167</sup> See *Novosteel* at 1269 (“{A}bsence of a reference to a particular product in the Petition does not necessarily indicate that the product is not subject to an order.”) (citations omitted).

those sources and especially in the scope language – which must be written in general terms – encompass the particular article in question.

DynaEnergetics makes much of the addition of coupling stock to the scope during the ITC’s investigation, and states that if the scope covered all hollow steel products of circular cross section there would have been no need to add coupling stock to the final scope.<sup>168</sup> Additionally, DynaEnergetics points to the fact that couplings and coupling blanks are not included in the scope and are not expressly included in the scope language.<sup>169</sup> However, we find that these arguments do not indicate that gun carrier tubing is out of the scope, simply because it is not mentioned. With respect to couplings and coupling blanks, DynaEnergetics itself notes that the ITC has specifically excluded couplings and coupling blanks.<sup>170</sup> The ITC’s statement clarifies the scope with respect to coupling and coupling blanks, but does not otherwise limit the language of the scope. Similarly, the specific inclusion of coupling stock in the scope language clarifies the scope, but does not otherwise limit the inclusive language of the scope. In other words, the inclusion of coupling stock in the second sentence of the scope language does not limit the description of covered OCTG products in the first sentence.

As we have noted, the language in *Bell Supply* discusses certain types of OCTG (green tube and limited service) and extraction. However, the definition of OCTG is greater than just these types of OCTG or just extraction. Therefore, we do not find that the current proceeding conflicts or contradicts our decision in *Bell Supply*.

DynaEnergetics also argues that gun carrier tubing is not OCTG as it “is never used in an oil well directly, as a stand-alone pipe or tube” and that it is used for processing by an original

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<sup>168</sup> See DynaEnergetics Draft Comments at 7.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*, at 7-8.

equipment manufacturer.<sup>171</sup> However, nothing in the scope of the *Orders* indicates that OCTG must be a stand-alone product, or that it cannot be used by an original equipment manufacturer. Similarly, DynaEnergetics objects to gun carrier tubing being OCTG because gun carrier tubing is used once and then removed from the well.<sup>172</sup> However, as the petitioner notes, drill pipe is a type of OCTG and it is removed from a well after its use in the drilling process.<sup>173</sup> Thus, we do not find these characteristics described by DynaEnergetics indicate that gun carrier tubing is not OCTG.

DynaEnergetics again states that gun carrier tubing is imported under an HTSUS subheading which covers mechanical tubing, stating that such a subheading includes mechanical tubing which is not OCTG.<sup>174</sup> As the CAFC in *Novosteel* stated, “a reference to an HTSUS number ‘is not dispositive’ about the scope of an antidumping or countervailing-duty order.”<sup>175</sup> The addition of the HTSUS subheading to include coupling stock and under which importers may import mechanical tubing, and DynaEnergetics’ entry under this subheading with the claim that it is mechanical tubing, does not mean that the scope of the *Orders* intended to include only casing, tubing, and coupling stock, nor does it prove that gun carrier tubing is not OCTG. Indeed, the removal of the word “only” from the scope language is not just a grammatical correction, but, instead, indicates that the scope language was intended to be inclusive, not restrictive. Similarly, the inclusion of an HTSUS subheading that is a basket category does not limit the scope of the *Orders*, which is based on the description of the products to be covered, and which we find covers gun carrier tubing.

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<sup>171</sup> *Id.*, at 11.

<sup>172</sup> *Id.*, at 12.

<sup>173</sup> See Petitioner Rebuttal Comments at 9.

<sup>174</sup> See DynaEnergetics Draft Comments at 14-15.

<sup>175</sup> See *Novosteel* at 1270.

Similarly, DynaEnergetics' arguments with respect to the scope language concerning API specifications is unavailing. Specifically, DynaEnergetics posits that the reference to non-API specifications "was intended to address limited service OCTG and OCTG green tubes, which do not meet the API 5 CT standard for OCTG" and "was also intended to address equivalent OCTG specifications, such as OCTG made to a manufacturer's proprietary specifications."<sup>176</sup> We note that DynaEnergetics' tubing is indeed pipe made to a proprietary specification, which would indicate that the scope of the *Orders* intended to capture just such tubing. Additionally, if this language were meant to address only limited service OCTG and green tubes, the scope language would have made specific reference to that. The inclusive nature of the language of the scope, other than the exclusions which are specified, indicates that the language of the scope evolved from the petition stage to be more inclusive. Again, we point to the CAFC's decision in *Novosteel* in support of our finding that not all products must be expressly identified by a petitioner in order to be covered by a scope. The question is not whether the scope language expressly mentions the particular article in question, but whether the description of the subject merchandise in the scope language – which must be written in general terms – encompasses the particular article in question.

Finally, we continue to find that the CBP instructions that the Department issued are proper. DynaEnergetics states that the Department's determination is "based on a new definition of OCTG."<sup>177</sup> We disagree. The definition we have used was the same definition used by the ITC, and the language of the scope reflects that definition. As we have noted above, this definition is inclusive, and is not limited as DynaEnergetics suggests. Additionally, our request for a voluntary remand does not in any way indicate that the scope language was unclear. We

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<sup>176</sup> See DynaEnergetics Draft Comments at 17.

<sup>177</sup> *Id.*, at 19.

requested the remand to re-examine all of the evidence on the record to ensure that our findings were consistent with record evidence. This does not indicate that the language of the scope was unclear.

## CONCLUSION

In sum, and in accordance with the instructions from the CIT, the Department finds that gun carrier tubing imported by DynaEnergetics is within the scope of the *Orders* on OCTG from the PRC. Additionally, we find that the CBP instructions issued by the Department are appropriate, as our analysis of the scope under the (k)(1) factors makes clear that gun carrier tubing is within the scope.

6/7/2017

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Signed by: RONALD LORENTZEN