



A-570-814; A-570-910  
A-570-930; A-570-956  
C-570-911; C-570-931  
C-570-957  
Scope Inquiry  
Fabricated Pipe Spools – SinoStruct  
**Public Document**  
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December 4, 2017

**MEMORANDUM TO:** James Maeder  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**THROUGH:** Erin Begnal  
Director, Office III  
AD/CVD Operations

**FROM:** Stephanie Moore  
Case Analyst, Office III  
AD/CVD Operations

**SUBJECT:** Antidumping and Countervailing Duty Orders on Carbon Steel Butt-Weld Pipe Fittings; Circular Welded Carbon-Quality Steel Pipe; Circular Welded Austenitic Stainless Steel Pressure Pipe; and Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People’s Republic of China: Preliminary Scope Ruling SinoStruct Engineered and Manufactured Pipe Spools

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## SUMMARY

On December 9, 2016,<sup>1</sup> the Department of Commerce (the Department) received a scope ruling request from SinoStruct Proprietary Limited (SinoStruct), to determine whether its engineered and manufactured pipe spools that are fabricated in the People’s Republic of China (PRC), using pipe spool components produced in third countries, are subject to the antidumping duty (AD) and countervailing duty (CVD) orders on various steel products from the PRC.<sup>2</sup> Based on our analysis of the scope language of the orders at issue, the sources described in 19 CFR

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<sup>1</sup> The scope ruling request covers seven orders. See SinoStruct Property Limited (SinoStruct) Scope Ruling Request (SinoStruct Scope Ruling Request), dated December 9, 2016.

<sup>2</sup> On October 20, 2016, we received a request for a scope ruling from Jacobs Engineering Group Inc. (Jacobs) for the same product in SinoStruct’s scope ruling request. The product for which the scope inquiry was requested was not in production at that time. Therefore, on August 25, 2017, the Department rejected Jacob’s scope ruling request and determined not to issue a scope ruling under 19 CFR 351.225(d).



351.225(k)(1), the Department's Westlake Ruling,<sup>3</sup> and the comments received, we recommend that the Department preliminarily determine that pipe spools fabricated by SinoStruct in the PRC, made entirely of pipe spool components from third countries, are outside the scope of the AD and CVD orders noted above. Additionally, we recommend that SinoStruct and the importers of these pipe spools produced and/or exported by SinoStruct certify that all components within the pipe spools are not subject to any of the Department's AD or CVD orders.

## BACKGROUND

On December 9, 2016, SinoStruct requested a scope ruling pursuant to 19 CFR 351.225(c) on whether engineered and manufactured pipe spools that it fabricates in the PRC, using pipe spool components produced in third countries for importation into the United States, are subject to the following AD and CVD orders:

- AD and CVD Orders on Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the PRC, A-570-956 and C-570-957
- AD and CVD Orders on Circular Welded Carbon Quality Steel Pipe from the PRC; A-570-910 and C-570-911
- AD and CVD Orders on Circular Welded Austenitic Stainless Pressure Pipe from the PRC; A-570-930 and C-570-931
- AD Order on Carbon Steel Butt-Weld Pipe Fittings from the PRC; A-570-814

SinoStruct requested that the Department issue a scope decision pursuant to 19 CFR 351.225(d) holding that the engineered and manufactured pipe spools that it fabricates in the PRC, incorporating pipe spool components from third countries, are outside the scope of the AD and CVD orders noted above. Tube Forgings of America (Tube Forgings), and Zekelman Industries (Zekelman) submitted comments in opposition to SinoStruct's Scope Request on December 20, 2016, and January 3, 2017, respectively. On January 12, 2017, SinoStruct filed additional rebuttal comments.

On January 18, 2017, pursuant to 19 CFR 351.225(e), the Department initiated a formal scope inquiry with respect to these pipe spools produced by SinoStruct in order to fully consider the comments received in connection with its scope ruling request. On February 10, 2017, Zekelman submitted comments in response to the initiation of the formal scope inquiries, and SinoStruct submitted comments in rebuttal to Zekelman's December 22, 2016 comments. On February 21, 2017, Zekelman submitted additional comments in response to the aforementioned

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<sup>3</sup> See Memorandum titled "Final Scope Ruling for Engineered and Manufactured Pipe Spools Imported from the People's Republic of China as part of the current Scopes of the Orders on *Carbon Steel Butt-Weld Pipe Fittings; Circular Welded Carbon-Quality Steel Pipe; Circular Welded Austenitic Stainless Steel Pressure Pipe; and Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China*," dated August 15, 2016 (Westlake Ruling); see also Memorandum, "Antidumping and Countervailing Duty Orders on Carbon Steel Butt-Weld Pipe Fittings; Circular Welded Carbon-Quality Steel Pipe; Circular Welded Austenitic Stainless Steel Pressure Pipe; and Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Prior Scope Ruling Relevant to this Proceeding," dated concurrently with this memorandum (Prior Scope Ruling Memorandum).

comments from SinoStruct. SinoStruct filed additional comments to rebut the comments filed by Zekelman and Tube Forgings.

On April 6, 2017, the Department issued a questionnaire to SinoStruct.<sup>4</sup> On April 19, 2017, SinoStruct submitted its response.<sup>5</sup> The Department extended the deadline for issuing the scope ruling various times, most recently on November 27, 2017 until December 4, 2017, to examine and analyze the information on the record.

## SCOPES OF THE ORDERS

### 1. Carbon Steel Butt-Weld Pipe Fittings from the PRC (A-570-814):

The merchandise covered by the order consists of certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings).

Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the HTSUS. The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.<sup>6</sup>

### 2. Circular Welded Carbon Quality Steel Pipe (CWP) from the PRC (A-570-910/C-570-911):

The scope of the orders is certain welded carbon quality steel pipes and tubes, of circular cross-section, and with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), whether or not stenciled, regardless of wall thickness, surface finish (*e.g.*, black, galvanized, or painted), end finish (*e.g.*, plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.*, ASTM, proprietary, or other), generally known as standard pipe and structural pipe (they may also be referred to as circular, structural, or mechanical tubing).

Specifically, the term “carbon quality” includes products in which (a) iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

- (i) 1.80 percent of manganese;
- (ii) 2.25 percent of silicon;
- (iii) 1.00 percent of copper;
- (iv) 0.50 percent of aluminum;

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<sup>4</sup> See Antidumping (AD) and Countervailing Duty Orders (CVD) on Various Pipe Products from the People’s Republic of China (PRC) - Scope Ruling Request Questionnaire, dated April 6, 2017.

<sup>5</sup> See SinoStruct’s letter titled “Questionnaire Response; SinoStruct Proprietary Limited,” (Sino Struct questionnaire response) dated April 19, 2017.

<sup>6</sup> See *Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings From the People’s Republic of China*, 57 FR 29702 (July 6, 1992).

- (v) 1.25 percent of chromium;
- (vi) 0.30 percent of cobalt;
- (vii) 0.40 percent of lead;
- (viii) 1.25 percent of nickel;
- (ix) 0.30 percent of tungsten;
- (x) 0.15 percent of molybdenum;
- (xi) 0.10 percent of niobium;
- (xii) 0.41 percent of titanium;
- (xiii) 0.15 percent of vanadium; or
- (xiv) 0.15 percent of zirconium.

Standard pipe is made primarily to American Society for Testing and Materials (ASTM) specifications, but can be made to other specifications. Standard pipe is made primarily to ASTM specifications A-53, A-135, and A-795. Structural pipe is made primarily to ASTM specifications A-252 and A-500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. This is often the case, for example, with fence tubing. Pipe multiple-stenciled to a standard and/or structural specification and to any other specification, such as the American Petroleum Institute (API) API-5L specification, is also covered by the scope of this investigation when it meets the physical description set forth above and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish. (The term “painted” does not include coatings to inhibit rust in transit, such as varnish, but includes coatings such as polyester.)

The scope of these orders does not include: (a) pipe suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) mechanical tubing, whether or not cold-drawn; (c) finished electrical conduit; (d) finished scaffolding; (e) tube and pipe hollows for redrawing; (f) oil country tubular goods produced to API specifications; and (g) line pipe produced to only API specifications.

The pipe products that are the subject of these orders are currently classifiable in HTSUS statistical reporting numbers 7306.30.1 0.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90, 7306.50.1 0.00, 7306.50.50.50, 7306.50.50.70, 7306.19.10.1 0, 7306.19.1 0.50, 7306.19.51.1 0, and 7306.19.51.50. However, the product description, and not the Harmonized Tariff Schedule of the United States (HTSUS) classification, is dispositive of whether merchandise imported into the United States falls within the scope of the orders.<sup>7</sup>

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<sup>7</sup> See *Notice of Antidumping Duty Order: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 42547 (July 22, 2008); see also *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 FR 42545 (July 22, 2008).

3. Circular Welded Austenitic Stainless Steel Pressure Pipe from the PRC (A-570-930/C-570-931):

The merchandise covered by these orders is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. Excluded from the scope are: (1) welded stainless mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A-269, ASTM A-270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005; 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010; 7306.40.1015; 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of these orders is dispositive.<sup>8</sup>

4. Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the PRC (A-570-956/C-570-957):

The merchandise covered by these orders is certain seamless carbon and alloy steel (other than stainless steel) pipes and redraw hollows, less than or equal to 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (e.g., hot-finished or cold-drawn), end finish (e.g., plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish (e.g., bare, lacquered or coated). Redraw hollows are any unfinished carbon or alloy steel (other than stainless steel) pipe or "hollow profiles" suitable for cold finishing operations, such as cold drawing, to meet the American Society for Testing and Materials (ASTM) or American Petroleum Institute (API) specifications referenced below, or comparable specifications. Specifically included within the scope are seamless carbon and alloy steel (other than stainless steel) standard, line, and pressure pipes produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, ASTM A-1024, and the API SL specifications, or comparable specifications, and meeting the physical parameters described above, regardless of application, with the exception of the exclusion discussed below.

Specifically excluded from the scope of the orders are: (1) All pipes meeting aerospace, hydraulic, and bearing tubing specifications; (2) all pipes meeting the chemical requirements of ASTM A-335, whether finished or unfinished; and (3) unattached couplings. Also excluded from the scope of the investigation are all mechanical, boiler, condenser and heat exchange

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<sup>8</sup> See *Antidumping Duty Order: Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China*, 74 FR 11351 (March 17, 2009); see also *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Countervailing Duty Order*, 74 FR 11712 (March 19, 2009).

tubing, except when such products conform to the dimensional requirements, *i.e.*, outside diameter and wall thickness of ASTM A-53, ASTM A-1 06 or API 5L specifications.

The merchandise covered by the orders is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.19.1020, 7304.19.1030, 7304.19.1045, 7304.19.1060, 7304.19.5020, 7304.19.5050, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, and 7304.59.8070.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.<sup>9</sup>

## LEGAL FRAMEWORK

When a request for a scope ruling is filed, the Department examines the scope language of the order at issue and the description of the product contained in the scope-ruling request.<sup>10</sup> Pursuant to the Department's regulations, the Department may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product.<sup>11</sup> If the Department determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order.<sup>12</sup>

Conversely, where the descriptions of the merchandise in the sources described in 19 CFR 351.225(k)(1) are not dispositive, the Department will consider the following five additional factors set forth at 19 CFR 351.225(k)(2). These factors are: "(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."<sup>13</sup> These factors are known commonly as the *Diversified Products* criteria.<sup>14</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.

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<sup>9</sup> See *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 75 FR 69052 (November 10, 2010); see also *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 69050 (November 10, 2010).

<sup>10</sup> See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

<sup>11</sup> See 19 CFR 351.225(k)(1).

<sup>12</sup> See 19 CFR 351.225(d).

<sup>13</sup> See 19 CFR 351.225(k)(2); *Diversified Products Corp. v. United States*, 572 F. Supp. 883, 889 (CIT 1983) (*Diversified Products*).

<sup>14</sup> See *Diversified Products*, 572 F. Supp. at 889.



In accordance with the Court of Appeals for the Federal Circuit's (Federal Circuit) reasoning in *Mid Continent*,<sup>15</sup> when potentially subject merchandise is included in a larger product, the Department first determines whether the component part of the larger product is itself covered by the terms of the order in accordance with the above framework. If the Department answers this question in the affirmative, the next step is to examine the language of the order, so as to determine whether the component part's inclusion in the larger product leaves it within the terms of the order. If the language of the order speaks directly to the inclusion or exclusion of the component part within the terms of the order as part of the larger product, the inquiry ends here. However, if the language of the order is silent, the Department must next turn to examine whether those sources described in 19 CFR 351.225(k)(l) are helpful in interpreting the order. If the Department determines that the component part is subject to the order if examined in its own right, and that the language of the order and the (k)(l) sources (if the language is silent) do not exclude it from the order by virtue of its inclusion in a larger product, there is a presumption that the component part is subject to the order.

## **DESCRIPTION OF THE MERCHANDISE SUBJECT TO THIS SCOPE RULING REQUEST**

At issue are pipe spool components produced in third countries, consisting of fittings, flanges, and tubular sections, that are used by SinoStruct to fabricate pipe spools in the PRC.<sup>16</sup> The fabrication process includes: (1) permanently or temporarily joining the pipe spool components, (2) shaping pipe spool components (*e.g.* cutting, bending, grinding, etc.), (3) testing pipe spools and the components, and (4) painting and finishing pipe spools.<sup>17</sup> According to SinoStruct, pipe spools that are the subject of its ruling request are custom made products.<sup>18</sup> SinoStruct further states that it produces the pipe spools at issue entirely from non-Chinese-origin components<sup>19</sup> that are not subject to any of the Department's AD or CVD orders. However, SinoStruct is requesting a scope ruling regarding pipe spools permanently joined by welding and incorporating components.<sup>20</sup> Generally, pipe spools will vary along numerous characteristics, including: chemical composition, length, diameter, method of joining, number of segments, shape, and coating.<sup>21</sup>

## **RELEVANT PRIOR SCOPE RULINGS**

Carbon Steel Butt-Weld Pipe Fittings from the PRC (A-570-814), Circular Welded Carbon Quality Steel Pipe from the PRC (A-570-910/C-570-911), Circular Welded Austenitic Stainless Steel Pressure Pipe from the PRC (A-570-930/C-570-931), Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the PRC (A-570-956/C-570-957):

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<sup>15</sup> See *Mid Continent Nail Corporation v. United States*, 725 F. 3d 1295 (Fed. Cir. 2013) (*Mid Continent*).

<sup>16</sup> See SinoStruct Scope Ruling Request, dated December 9, 2016 at 4.

<sup>17</sup> *Id.*, at 5.

<sup>18</sup> See SinoStruct's letter dated February 10, 2017 at 2.

<sup>19</sup> See SinoStruct's questionnaire response at 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

Westlake Vinyls Company (Westlake)<sup>22</sup>: Westlake requested that the Department determine whether pipe spools fabricated in the PRC, using pipe spool components made in the PRC, were subject to the AD and CVD orders on Carbon Steel Butt-Weld Pipe Fittings, Circular Welded Carbon-Quality Steel Pipe, Circular Welded Austenitic Stainless Steel Pressure Pipe, and Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the PRC. The products in question consisted of pipe and fitting material components that were permanently shaped, welded, tested, and finish painted by the manufacturer. Additionally, the components of the pipe spools were connected to one another and other plant equipment by a variety of industry standard connections at each end. Consistent with the Federal Circuit's guidance in *Mid Continent*,<sup>23</sup> the Department first examined whether each component part, when considered as a separate component, was covered by the language of the scope of the orders. The Department determined that each scope contained language indicating that each of the component parts met the physical characteristics of the scope of the orders. Next, the Department considered whether the incorporation of the pipe spool components into pipe-spools removed the components from the relevant scope. The Department did not find that all pipe spools, as a whole, are within any of the scopes. To the contrary, the Department simply found that some of the components of the pipe spools were within the scope of the orders and that there was no basis in the language of the scope of the orders or any of the (k)(1) factors to exclude the components when they were incorporated into pipe spools.<sup>24</sup>

## **ISSUE: Whether The Pipe Spools Produced by SinoStruct Are Outside the Scopes of the AD and CVD Orders**

### *SinoStruct's Arguments*

SinoStruct claims that the pipe spools that it produces and seeks to import into the United States are fabricated in the PRC and comprised entirely of non-subject pipe spool components. SinoStruct also asserts that because the pipe spool components at issue are produced in third countries and are not subject to AD or CVD orders, the pipe spools are not covered by the PRC AD and CVD orders identified in its scope request.

In support of its argument, SinoStruct cites to the Department's decision in the Westlake Ruling. SinoStruct claims that in the Westlake Ruling the Department held that, in the cases considered, fabricating a pipe spool did not remove the pipe spool components incorporated therein from an AD or CVD order that they were subject to prior to fabrication. According to SinoStruct, the Department's decision in the Westlake Ruling is based on the Department's underlying determination that each of the pipe spool components considered remained within the literal language of their respective scopes after incorporation into a pipe spool.<sup>25</sup> Moreover, SinoStruct further argues that in the Westlake Ruling, the Department rejected analyzing pipe spools as unique products and instead analyzed the individual components of the pipe spools without considering whether a substantial transformation had occurred. Therefore, to be consistent, SinoStruct argues that the Department should apply the same reasoning as in the Westlake

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<sup>22</sup> See Westlake Ruling; see also Prior Scope Memorandum.

<sup>23</sup> See *Mid Continent Nail Corp.*, 725 F.3d at 1302.

<sup>24</sup> See Westlake Ruling at 15-16.

<sup>25</sup> See SinoStruct's Scope Ruling Request at 6 – 7.



Ruling and determine that pipe spools fabricated in the PRC from non-Chinese components are not subject to PRC AD or CVD orders, regardless of whether a substantial transformation occurs in the PRC.<sup>26</sup>

SinoStruct argues that if the Department determines that non-PRC imported pipe spool components become subject to PRC AD or CVD orders by fabrication into a pipe spool in the PRC, this would constitute an expansion of the scope of the orders that has never been petitioned for or reviewed.<sup>27</sup>

SinoStruct argues that questions about certificates of origin or how to demonstrate origin to U.S. Customs officials are irrelevant to the Department's scope request rulings. As evidence of production of the pipe spools in its scope ruling request, SinoStruct provided catalogs of its ongoing fabrication of pipe spools in the PRC.<sup>28</sup> In addition, SinoStruct submitted a "Material Traceability Overview," including a workflow process that outlines how SinoStruct proceeds from receipt of the Customer Requisition Quotation (RFQ), to acceptance of the order for fabrication, to the production at the workshop, and completion of the order.<sup>29</sup>

SinoStruct claims that its pipe spools are highly engineered products, and production involves at least connecting, shaping, and painting to customize them for a specific application. SinoStruct also claims that it maintains records that enable it to trace the origin of the components used to produce pipe spools.<sup>30</sup> Further, SinoStruct states that pipe spool fabrication costs are driven more by labor costs than by material costs and that these labor-intensive processes represent the majority of the cost of production of a pipe spool.<sup>31</sup> Moreover, SinoStruct states that ample evidence of pipe spool production was provided in the context of the Westlake Ruling for the Department to make a ruling without concern about the production of pipe spools.<sup>32</sup>

In response to the Department's questionnaire, SinoStruct provided documentation which demonstrates that it produces pipe spools entirely from non-Chinese origin components.<sup>33</sup> SinoStruct notes that the documents it submitted include material test certificates, purchase orders, and certificates of origin showing how seamless pipe of multiple origins and pipe fittings, largely from Korea, are combined to produce pipe spools.<sup>34</sup>

#### *Arguments From Other Interested Parties*

Zekelman argues that SinoStruct misconstrues the Westlake Ruling. Zekelman states that the Westlake Ruling involved pipe spools fabricated in the PRC from pipe components that also were manufactured in the PRC. According to Zekelman, the Department concluded that there

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<sup>26</sup> See SinoStruct's Reply to Comments on Scope Ruling Request (Reply Comments) dated February 10, 2017, at 3 – 4.

<sup>27</sup> *Id.*, at 4.

<sup>28</sup> See SinoStruct Reply Comments dated February 10, 2017 at 4, and Exhibit 3.

<sup>29</sup> *Id.*, at Exhibit 1.

<sup>30</sup> See SinoStruct's Reply Comments dated February 21, 2017 at 2 – 3.

<sup>31</sup> See SinoStruct's Reply Letter dated January 12, 2017 at 2, and Exhibit 1.

<sup>32</sup> See SinoStruct's Reply Comments dated February 21, 2017 at 7.

<sup>33</sup> See SinoStruct's questionnaire response at 2.

<sup>34</sup> See *id.*

was no need to conduct a “substantial transformation” analysis, because both the pipe components and the finished pipe spools clearly fell within the scope of the orders at issue.<sup>35</sup> Therefore, Zekelman argues, in the Westlake Ruling, the Department determined that, “the descriptions of the pipe spools’ constituent parts on an individual basis and as an integrated part of the whole were dispositive based on the scope language and the (k)(l) criteria.”<sup>36</sup>

Zekelman also argues that SinoStruct presents a different question from that addressed in the Westlake Ruling, namely whether pipe spools fabricated in the PRC from third country components are subject to the orders at issue. According to Zekelman, the Westlake Ruling holds that the finished pipe spools – assuming their country of origin is the PRC – fall within the scope of the PRC orders.<sup>37</sup> Yet, Zekelman argues that the Westlake Ruling does not resolve the question of whether the fabrication process results in a “substantial transformation” sufficient to confer PRC origin. Zekelman asserts that if SinoStruct can demonstrate that no substantial transformation occurred in the PRC, the finished pipe spools presumably would not be subject to AD or CVD orders against the PRC. Zekelman asserts that SinoStruct has failed to provide any evidence regarding substantial transformation and only presented evidence that fabrication activities in the PRC are extensive and that component material costs represent only a small fraction of the value of the finished spool.<sup>38</sup> According to Zekelman, this evidence indicates that fabrication may result in a substantial transformation, such that the finished pipe spools at issue should fall inside the scope of the PRC orders.

Zekelman further argues that even if SinoStruct was able to demonstrate that all pipe spool components originate in third countries and that no “substantial transformation” occurs in the PRC, SinoStruct provides no support for its argument that “the pipe spool components are not subject to the Chinese AD and CVD orders or those of their third country of production.”<sup>39</sup>

Zekelman contends that even if the Department agrees with SinoStruct that the country of origin should be the location where the pipe spool components are manufactured, rather than where the pipe spools are fabricated, then for any pipe spool entry for which it cannot be documented that the pipe spool components originated outside the PRC, such components should be considered subject to the AD and CVD orders from the PRC.

Tube Forgings argues that there is no reliable mechanism for U.S. Customs and Border Protection (CBP) to establish that third country pipe spool components incorporated in PRC pipe spools are not themselves of PRC origin. Thus, according to Tube Forgings, finding the products at issue outside the scope of the orders would open a significant channel of circumvention. Moreover, Tube Forgings suggests that the circumvention problem is not specific to SinoStruct, as other companies could circumvent the orders. Tube Forgings states that it is the Department’s practice to take into account circumvention concerns when making scope determinations.<sup>40</sup> Further, Tube Forgings states that the inability of CBP to confirm that carbon steel butt-weld

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<sup>35</sup> See Zekelman Rebuttal Comments, dated February 21, 2017 at 2.

<sup>36</sup> See *id.*, citing West Lake Ruling at 12.

<sup>37</sup> *Id.*

<sup>38</sup> See Zekelman Comments on Scope Ruling Request by SinoStruct (February 10, 2017), at 2 – 3, citing SinoStruct’s Reply Comments dated January 12, 2017 at 2, and Exhibit 2.

<sup>39</sup> See Zekelman Comments on Scope Ruling Request by SinoStruct (January 3, 2017) at 4.

<sup>40</sup> See Tube Forgings’ Opposition of SinoStruct Scope Ruling Request dated February 10, 2017, at 6.

pipe fittings incorporated into SinoStruct’s pipe spools is of non-Chinese origin – either because the origin of the fitting is lost in the assembly of the pipe spool or because it is impossible to determine whether a finished fitting was produced in a third country from an unfinished PRC fitting—establishes why the Department must take into account circumvention concerns.<sup>41</sup>

#### **DEPARTMENT’S POSITION:**

The Department preliminarily determines that, to the extent that SinoStruct and importers of SinoStruct pipe spools from the PRC can demonstrate that imported pipe spools were produced from non-PRC origin components that are not subject to any of the Department’s AD or CVD orders, the pipe spools in SinoStruct’s scope inquiry are outside the scope of the AD and CVD orders noted above. Additionally, we will be requiring that SinoStruct and the importers of SinoStruct pipe spools fabricated in the PRC entirely from components not subject to any of the Department’s AD or CVD orders maintain certifications to that effect.

SinoStruct’s scope ruling request involves engineered and manufactured pipe spools that are fabricated in the PRC by SinoStruct, using pipe spool components produced in third countries, for importation into the United States.<sup>42</sup> SinoStruct claims that the “facts and pipe spool components in its request are virtually identical” to the merchandise considered by the Department in the Westlake Ruling except that its pipe spool components “are produced in third {countries}” and not subject to any AD or CVD orders.<sup>43</sup> Therefore, because SinoStruct’s scope request is based on the same types of pipe spool components considered extensively by the Department in the Westlake Ruling, we have followed the guidance of *Mid Continent*<sup>44</sup> and relied, in part, on the Department’s analysis in to the Westlake Ruling to determine whether the products in SinoStruct’s scope request are covered by the scopes of the AD and CVD orders.

As noted in the Legal Framework section, the Federal Circuit held in *Mid Continent* that the interpretive process for a scope determination involving a mixed media item involves two steps. First, the Department determines whether the component part of the larger product is itself covered by the terms of the order.<sup>45</sup> Second, if the Department answers this question in the affirmative, the Department examines the language of the order to determine whether the component part’s inclusion in the larger product should nonetheless result in its exclusion from the scope of the relevant order.<sup>46</sup>

In accordance with *Mid Continent*, we have considered whether the components SinoStruct is using to make the pipe spools described in its scope ruling request are subject to the Department’s AD and CVD orders. The U.S. Court of International Trade (CIT) has held that AD and CVD orders are intended to impose duties upon merchandise from a particular country.<sup>47</sup> Thus, merchandise that is subject to an AD or CVD order must be (1) the type of merchandise described in the order and (2) from the particular country or countries covered by the scope of

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<sup>41</sup>See *id.*, at 6 – 7.

<sup>42</sup> See SinoStruct Scope Ruling Request at 1.

<sup>43</sup> See *id.*, at 8. The same application was filed by SinoStruct in the seven orders that are subject to this inquiry.

<sup>44</sup> See 725 F.3d at 1302.

<sup>45</sup> *Id.*

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

<sup>47</sup> See *Bell Supply Co., LLC, v. United States*, 179 F. Supp. 3d 1082, 1091 (CIT 2016).

the order.<sup>48</sup> Merchandise must meet both requirements to be subject to an AD or CVD order; otherwise the merchandise falls outside the scope of the order.<sup>49</sup> Although the components in SinoStruct's pipe spools are types of merchandise described in certain AD and CVD orders, the components in these pipe spools are not from a country covered by these same AD or CVD orders. As a result, such components are not subject merchandise. In response to the Department's questionnaire, SinoStruct provided sample documentation demonstrating that it produces pipe spools entirely from non-PRC origin components that are not subject to any of the Department's AD or CVD orders.<sup>50</sup> The documents in its questionnaire response included material test certificates, purchase orders, and certificates of origin for the components (e.g., seamless pipe of multiple origins and pipe fittings) SinoStruct combines to produce the pipe spools at issue.<sup>51</sup>

Per *Mid Continent*, the second step in the Department's interpretive process for scope determinations involving mixed media items is determining whether the inclusion of the merchandise within a mixed media item results in its exclusion from the scope of the order.<sup>52</sup> However, the Federal Circuit explained that the second step only applies where the merchandise within a mixed media item is subject to the scope of an AD or CVD order.<sup>53</sup> In this case there is no basis for the Department to proceed to the second step of the mixed media analysis because the pipe spool components used by SinoStruct are produced in third countries and, thus, are not subject to the scope of an AD or CVD order.

In the *Westlake* Ruling, the Department found that the scope language of the orders at issue and the (k)(1) materials were dispositive in finding that the pipe spools' constituent parts on an individual basis were included in the scope of the orders at issue.<sup>54</sup> Additionally, the Department's analysis of the scope language and the (k)(1) criteria indicated that none of the pipe spool component parts should be considered outside the scopes of the relevant orders based on their incorporation into a pipe spool.<sup>55</sup> In other words, the Department's analysis resulted in the conclusion that the incorporation of the component parts subject to certain PRC AD and CVD orders into pipe spools did not render the constituent components excluded from the scope of the orders. Therefore, as a corollary to the Department's finding in the *Westlake* Ruling, we find that the incorporation of the non-subject pipe spool components into a pipe spool by SinoStruct in the PRC does not render the constituent components subject to the relevant PRC orders.<sup>56</sup>

Furthermore, with respect to Zekelman's contention that the Department should be applying a substantial transformation analysis, we find that such analysis is not warranted because we have

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<sup>48</sup> *Id.*

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

<sup>50</sup> See SinoStruct's questionnaire response at 2.

<sup>51</sup> See SinoStruct's questionnaire response at 2.

<sup>52</sup> See 725 F.3d at 1302.

<sup>53</sup> See *Mid Continent*, 725 F.3d at 1302 (The interpretive process for a scope determination relating to mixed media items necessarily involves two steps. First, Commerce must determine whether the potentially-subject merchandise included within the mixed media item is within the literal terms of the antidumping order. *If it is*, then Commerce must determine whether the inclusion of that merchandise within a mixed media item should nonetheless result in its exclusion from the scope of the order." (emphasis added)).

<sup>54</sup> See *Westlake* Ruling at 11-12.

<sup>55</sup> See *Westlake* Ruling at 15.

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

applied the mixed media analysis, consistent with *Mid Continent*, and are able to make a determination about the merchandise at issue under that framework.

Finally, to address the concerns that interested parties' expressed with respect to evasion or "circumvention" of the Department's AD/CVD orders as a result of any finding that these pipe spools produced by SinoStruct are not subject merchandise, the Department requested and received additional sample documentation from SinoStruct to demonstrate that it produces pipe spools entirely from components that were not produced in the PRC and are not covered by any of the Department's AD or CVD orders.<sup>57</sup> Further, we preliminarily determine to limit this scope ruling to pipe spools that are produced by SinoStruct in the PRC entirely from components produced in third countries that are not subject to any of the Department's AD or CVD orders, and to enforce this limitation, we are implementing a certification process for SinoStruct and the U.S. importers of SinoStruct pipe spools. The certification process is detailed below.

## **CERTIFICATION REQUIREMENTS**

The Department is requiring that SinoStruct and importers of the pipe spools SinoStruct produced in the PRC from components that are not subject to any U.S. AD or CVD orders, and exported to the United States, maintain certifications to that effect. SinoStruct and the importer are further required to present the certifications to the Department and/or U.S. Customs and Border Protection, as appropriate, upon demand by the respective agency. Additionally, the claims made in the certifications and any supporting documentation are subject to verification by the Department and/or U.S. Customs and Border Protection. Attached to this preliminarily scope ruling is the language for the SinoStruct and importer certifications.

Asking SinoStruct and the importer of the pipe spools that SinoStruct produces and exports to certify that the product satisfies the requirements of this scope ruling is a reasonable and appropriate approach to the enforcement of the Department's AD and CVD orders.

In the event that the certification requirements established by this scope ruling are not met, the Department intends to instruct CBP to suspend all unliquidated entries for which these requirements were not met and require that the importer post cash deposits at the country-wide or all-others rate in effect for the relevant order(s). Because 19 CFR 351.225(1)(2) requires that the Department terminate the suspension of liquidation if it determines that the product subject to the scope inquiry is not within the scope of the order, these certification requirements will go into effect on the date of the preliminary scope ruling. We invite interested parties to comment on the certification requirements and implementation thereof, and will consider such comments for our final scope ruling.

## **CERTIFICATIONS**

Please see Attachment I and II for the SinoStruct and importer certifications.

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<sup>57</sup> See SinoStruct's questionnaire response at 2.



## DEADLINE FOR SUBMISSION OF COMMENTS ON PRELIMINARY RULING

Interested parties may comment on the Department's preliminary scope ruling and the Department's proposed certification requirements in their case and rebuttal briefs. We will not accept new factual information in case and rebuttal briefs. Interested parties may submit case briefs no later than 20 days after the issuance of this preliminary scope ruling. Parties may then submit their rebuttal briefs within ten days of the date of the filing of case briefs. We will not accept surrebuttals. Written comments and rebuttal comments should be submitted via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). An electronically filed document must be received successfully in its entirety by 5 p.m. Eastern Time on the day it is due.

## DEPARTMENT'S RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(f)(3) and 351.225(k)(l), we recommend preliminarily finding that pipe spools produced by SinoStruct using third country components that are not subject to any AD and CVD orders are outside of the scope of the AD and CVD orders noted above. Additionally, we recommend that SinoStruct and importers of pipe spools produced by SinoStruct certify that all the components in the pipe spools are not subject to the Department's AD or CVD orders. If the recommendation in this memorandum is accepted, we will serve a copy of this memorandum to all interested parties on the scope service list via first class mail as directed by 19 CFR 351.225(f)(4).

Agree

Disagree

12/4/2017

X *James Maeder*

Signed by: JAMES MAEDER



## ATTACHMENT I

### Proposed Importer Certification

I hereby certify that:

- My name is {INSERT COMPANY OFFICIAL'S NAME HERE} and I am an official of {INSERT NAME OF IMPORTING COMPANY};
- I have direct personal knowledge of the facts regarding the importation of the pipe spools that entered under entry number(s) {INSERT ENTRY NUMBER(S)} and are covered by this certification;
- I have personal knowledge of the facts regarding the production of the imported products covered by this certification;
- The pipe spools imported from the People's Republic of China (PRC), as identified above, are produced and exported by SinoStruct Proprietary Limited from pipe spool components that are not subject to any U.S. antidumping or countervailing duty orders from any country;
- I understand that {INSERT NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries;
- I understand that {INSERT NAME OF IMPORTING COMPANY} is required to provide this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the Department of Commerce (the Department);
- I understand that {INSERT NAME OF IMPORTING COMPANY} is required to maintain a copy of SinoStruct Proprietary Limited's certification attesting to the production and export of the imported merchandise identified above for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any antidumping duty litigation regarding such entries;
- I understand that {INSERT NAME OF IMPORTING COMPANY} is required to provide a copy of SinoStruct Proprietary Limited's certification and supporting records, upon request, to CBP and/or the Department;
- I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or the Department;
- I understand that failure to maintain the required certification and/or failure to substantiate the claims made herein, will result in:
  - suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met and
  - the requirement that the importer post an antidumping and/or countervailing cash deposit on those entries equal to the country-wide or all-others rate in effect for the relevant order(s);
- I understand that agents of the importer, such as brokers, are not permitted to make this certification;
- This certification was completed at or prior to the time of the entry;

- I am aware that U.S. law (including, but not limited to, 18 U.S.C. §1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government;

Signature \_\_\_\_\_  
Name of importing company official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## ATTACHMENT II

### Proposed Producer and Exporter Certification

I hereby certify that:

- My name is {INSERT COMPANY OFFICIAL'S NAME HERE} and I am an official of SinoStruct Proprietary Limited;
- I have direct personal knowledge of the facts regarding the production and exportation to the United States of the pipe spools covered by this certification;
- The pipe spools covered by this transaction were sold to {INSERT U.S. CUSTOMER NAME} pursuant to invoice #: {LIST THE INVOICE #S HERE};
- The pipe spools covered by this certification are produced in, and exported from the People's Republic of China (PRC) by SinoStruct Proprietary Limited and are produced from pipe spool components that are not subject to any U.S. antidumping or countervailing duty orders from any country;
- I understand that SinoStruct Proprietary Limited is required to maintain a copy of this certification and sufficient documentation supporting this certification for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries;
- I understand that SinoStruct Proprietary Limited is required to provide this certification and all records and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (the Department);
- I understand that the claims made herein, and the substantiating documentation are subject to verification by CBP and/or the Department;
- I understand that failure to maintain the required certification or failure to substantiate the claims made herein, will result in:
  - suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met and
  - the requirement that the importer post a cash deposit on the entries at the country-wide or all-others rate in effect for the relevant order(s);
- This certification was completed at or prior to the time of export from the PRC;
- I am aware that U.S. law (including, but not limited to, 18 U.S.C. §1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government;

\_\_\_\_\_  
Name of SinoStruct Proprietary Limited company official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date