

UNITED STATES COURT OF INTERNATIONAL TRADE

DYNAENERGETICS U.S. INC.,

Plaintiff,

v.

UNITED STATES,

Defendant,

MAVERICK TUBE CORPORATION,

Defendant-Intervenor.

Before: Mark A. Barnett, Judge

Court No. 16-00045

OPINION

[Sustaining the U.S. Department of Commerce's scope determination and its instructions to U.S. Customs and Border Protection associated with the scope determination.]

Dated: March 16, 2018

Diana Dimitriuc Quaia, Arent Fox LLP, of Washington, DC, argued for Plaintiff. With her on the brief were John M. Gurley and Aman Kakar.

Justin R. Miller, Senior Trial Counsel, International Trade Field Office, Civil Division, U.S. Department of Justice, of New York, NY, argued for Defendant. With him on the brief were Chad A. Readler, Acting Assistant Attorney General, Jeanne E. Davidson, Director, and Claudia Burke, Assistant Director. Of counsel on the brief was Paul Keith, Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, DC.

Robert E. DeFrancesco, III, Wiley Rein LLP, of Washington, DC, argued for Defendant-Intervenor. With him on the brief were Alan H. Price and Adam M. Teslik.

Barnett, Judge: This action involves a challenge to a U.S. Department of Commerce (“Commerce” or the “agency”) scope determination for the antidumping and countervailing duty orders on *Certain Oil Country Tubular Goods from the People’s Republic of China*, 75 Fed. Reg. 28,551 (Dep’t Commerce May 21, 2010) (am. final determination of sales at less than fair value and antidumping duty order) (“AD Order”); *Certain Oil Country Tubular Goods from the People’s Republic of China*, 75 Fed. Reg. 3,203 (Dep’t Commerce Jan. 20, 2010) (am. final affirmative countervailing duty determination and countervailing duty order) (“CVD Order”) (collectively, “AD & CVD Orders” or “the Orders”). Before the court is the remand redetermination issued pursuant to *DynaEnergetics U.S. Inc. v. United States*, 41 CIT ___, 203 F. Supp. 3d 1351 (2017). See Final Results of Redetermination Pursuant to Court Remand (“Remand Results”), ECF No. 53-1.¹ DynaEnergetics U.S. Inc. (“Plaintiff” or “DynaEnergetics”) challenges the Remand Results in which Commerce determined that Plaintiff’s customized tubing for perforating gun carriers (“gun carrier tubing”) is within the scope of the Orders. See generally Pl.’s Comments on the U.S. Department of Commerce’s Remand Redetermination (“Pl.’s Comments”) at 5-26, ECF No. 57; Remand Results. Plaintiff also challenges Commerce’s instructions to U.S. Customs and Border Protection (“Customs” or “CBP”) associated with this ruling. Pl.’s Comments at 26-28.

¹ Defendant filed the public version of the administrative record (“PR”) at ECF Nos. 19-2 and 19-4; the confidential version of the administrative record (“CR”) at ECF Nos. 19-3 and 19-5; Commerce’s instructions to Customs at ECF Nos. 27-1, 27-2; and the public remand administrative record (“PRR”) at ECF Nos. 55-2, 55-3. The parties also submitted joint appendices containing record documents cited in their briefs. See Confidential Joint App. (“CJA”), ECF No. 66; Public Joint App. (“PJA”), ECF No. 67. The court references the public versions of the relevant record documents throughout this opinion, unless otherwise specified.

Defendant, the United States, and Defendant-Intervenor, Maverick Tube Corporation, defend Commerce's Remand Results with respect to both issues. See generally Def.'s Resp. to Comments on the Remand Redetermination ("Def.'s Resp."), ECF No. 60; Def.-Int. Maverick Tube Corporation's Reply Comments on Final Results of Redetermination Pursuant to Court Remand ("Def.-Int's Resp."), ECF No. 64.² For the reasons discussed below, the court sustains Commerce's Remand Results.

BACKGROUND

On May 5, 2009, Commerce initiated antidumping and countervailing duty investigations of certain oil country tubular goods ("OCTG") from the People's Republic of China ("PRC"). *Certain Oil Country Tubular Goods from the People's Republic of China*, 74 Fed. Reg. 20,671 (Dep't Commerce May 5, 2009) (initiation of antidumping duty investigation) ("*AD Investigation*"); *Certain Oil Country Tubular Goods from the People's Republic of China*, 74 Fed. Reg. 20,678 (Dep't Commerce May 5, 2009) (initiation of countervailing duty investigation) ("*CVD Investigation*"). Commerce subsequently issued the antidumping and countervailing duty orders on May 21, 2010, and Jan 20, 2010, respectively. See generally *AD & CVD Orders*. The *Orders* defined their scope as follows:

[C]ertain 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 American Petroleum Institute ("API") or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG

² Defendant-Intervenor filed public and confidential versions of its responsive comments. See Def.-Int.'s Resp.; Confidential Def.-Int. Maverick Tube Corporation's Reply Comments on Final Results of Redetermination Pursuant to Court Remand, ECF No. 63. The court references the public version.

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.

AD Order, 75 Fed. Reg. at 28,553.³ The *Orders* also included relevant U.S. Harmonized Tariff Schedule (“HTSUS”) subheadings, which Commerce provided for “convenience and customs purposes only,” noting that the “written description of the scope of the order is dispositive.” *Id.*

On September 25, 2015, Plaintiff, a U.S. producer of oil and gas well perforating systems that imports gun carrier tubing for use in those systems, requested a scope ruling to determine whether its gun carrier tubing falls outside the scope of the *Orders*. Request for a Scope Ruling on Certain Tubing for Perforating Gun Carriers (Sep. 25, 2015) (“Scope Ruling Request”), PJA Tab 1, PR 1-6, ECF No. 67. On February 12, 2016, based on its analysis of the factors enumerated in 19 C.F.R. § 351.225(k)(1), Commerce determined that DynaEnergetics’ gun carrier tubing is within the scope of the *Orders*. Final Scope Ruling on DynaEnergetics U.S. Inc.’s Perforating Gun Carriers (February 12, 2016) (“Final Scope Ruling”) at 10-13, PJA Tab 8, PR 20, ECF No. 67. Plaintiff timely challenged Commerce’s scope determination and the accompanying instructions to Customs before this court. *DynaEnergetics U.S. Inc.*, 203 F. Supp. 3d at 1354. Defendant requested a remand to “reconsider [Commerce’s] findings in light of DynaEnergetics’ contentions” before the court. *Id.* As the court previously noted, “Defendant acknowledged that the agency’s analysis was cursory and did not fully

³ The scope of both the *Orders* is the same. Compare *AD Order*, 75 Fed. Reg. at 28,553, with *CVD Order*, 75 Fed. Reg. at 3,204. For ease of reference, the court refers only to the scope of the *AD Order*.

address [Plaintiff's] arguments." *Id.* at 1355. The court granted the request and remanded the matter for the agency to reconsider the scope determination at issue and, if appropriate, its instructions to Customs associated with the scope determination. *Id.* at 1356. Pursuant to the court's order, Commerce timely issued its Remand Results on June 7, 2017, continuing to find that Plaintiff's gun carrier tubing is within the scope of the *Orders*. Remand Results at 1. Additionally, with respect to the customs instructions associated with its scope determination, Commerce found that the customs instructions were proper. *Id.* at 1-2. Plaintiff now challenges both determinations. It requests that the court remand Commerce's determination pursuant to 19 C.F.R. § 351.225(k)(1) for the agency to initiate a scope inquiry and consider the factors listed in 19 C.F.R. § 351.225(k)(2). Pl.'s Comments at 24-26. Further, in the event the Court does affirm the Remand Results, Plaintiff requests that the Court order "that suspension of liquidation be imposed only on a prospective basis." Pl.'s Comments at 28.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to § 516A(a)(2)(B)(vi) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a(a)(2)(B)(vi)(2012),⁴ and 28 U.S.C. § 1581(c). The court will uphold an agency determination that is supported by substantial evidence and otherwise in accordance with law. 19 U.S.C. § 1516a(b)(1)(B)(i). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Eckstrom Indus., Inc. v. United States*, 254 F.3d 1068, 1071 (Fed. Cir. 2001) (internal quotation marks and citation omitted). Additionally, "the possibility of

⁴ All citations to the Tariff Act of 1930, as amended, are to Title 19 of the U.S. Code and all citations to the U.S. code are to the 2012 edition, unless otherwise specified.

drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Id.* (citation omitted).

DISCUSSION

I. Legal Framework

Because descriptions of merchandise contained in the scope of an antidumping or countervailing duty order must be written in general terms, issues may arise as to whether a particular product is included within the scope of such an order. See 19 C.F.R. § 351.225(a). When those issues arise, Commerce's regulations direct it to issue "scope rulings" that clarify whether a particular product falls within the purview of an antidumping or countervailing duty order's scope. *Id.* Although there are no specific statutory provisions that govern the interpretation of the scope of an order, the determination of whether a particular product is included within the scope of an order is governed by case law and the regulations published at 19 C.F.R. § 351.225. *Meridian Prods., LLC v. United States*, 851 F.3d 1375, 1381 (Fed. Cir. 2017) (citing *Shenyang Yuanda Aluminum Indus. Eng'g Co. v. United States*, 776 F.3d 1351, 1354 (Fed. Cir. 2015); see also *Eckstrom Indus.*, 254 F.3d at 1071–72 (noting that 19 C.F.R. § 351.225 governs a determination of whether an antidumping duty order covers a particular product).⁵

Commerce's inquiry must begin with the relevant scope language. See *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097 (Fed. Cir. 2002) (explaining that the

⁵ The regulations establish a two-step process, and "case law has added another layer to the inquiry." *Meridian Prods.*, 851 F.3d at 1381 (distinguishing between Commerce's examination of the "text of an order's scope" and the sources enumerated in 19 C.F.R. § 351.225(k)(1), discussed herein).

language in the order is the “predicate for the interpretive process” and the “cornerstone” of a scope analysis”); *Mid Continent Nail Corp. v. United States*, 725 F.3d 1295, 1302 (Fed. Cir. 2013); *Meridian Prods.*, 851 F.3d at 1381. If the language is ambiguous, Commerce interprets the scope “with the aid of” the sources set forth in 19 C.F.R. § 351.225(k). *Meridian Prods.*, 851 F.3d at 1381; *Duferco Steel*, 296 F.3d at 1096-97; *Mid Continent Nail Corp.*, 725 F.3d at 1302. Specifically, Commerce first considers the “[t]he descriptions of the merchandise contained in the petition, [Commerce’s] initial investigation, and the [prior] determinations of [Commerce] (including prior scope determinations) and the [International Trade] Commission.” *Mid Continent Nail Corp.*, 725 F.3d at 1302 (quoting 19 C.F.R. § 351.225(k)(1) (the “(k)(1) factors”)).

If the (k)(1) factors are dispositive, Commerce issues a final scope ruling. See 19 C.F.R. § 351.225(d). To be dispositive, the (k)(1) factors “must be ‘controlling’ of the scope inquiry in the sense that they definitively answer the scope question.” *Sango Int’l L.P. v. United States*, 484 F.3d 1371, 1379 (Fed. Cir. 2007). When the (k)(1) factors are not dispositive, Commerce considers the sources in subsection (k)(2) of the regulation. See 19 C.F.R. § 351.225(k)(2).⁶

⁶ Specifically, Commerce will consider: “(i) [t]he physical characteristics of the product; (ii) [t]he expectations of the ultimate purchasers; (iii) [t]he ultimate use of the product; (iv) [t]he channels of trade in which the product is sold; and (v) [t]he manner in which the product is advertised and displayed.” 19 C.F.R. § 351.225(k)(2) (the “(k)(2) factors”). Those factors are sometimes referred to as the *Diversified Products* factors because they were first articulated in *Diversified Prods. Corp. v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983). See *Walgreen Co. of Deerfield, IL v. United States*, 620 F.3d 1350, 1355 & n.2 (Fed. Cir. 2010).

“Commerce is entitled to substantial deference with regard to its interpretations of its own antidumping duty orders.” *King’s Supply Co., LLC v. United States*, 674 F.3d 1343, 1348 (Fed. Cir. 2012). Nevertheless, “Commerce cannot interpret an antidumping order so as to change the scope of th[e] order, nor can Commerce interpret an order in a manner contrary to its terms.” *Eckstrom Indus.*, 254 F.3d at 1072 (internal quotation marks and citation omitted). When a party challenges a scope determination, the court’s objective is to determine whether the scope of the order “contain[s] language that specifically includes the subject merchandise or may be reasonably interpreted to include it.” *Duferco Steel, Inc.*, 296 F.3d at 1289. The agency’s factual findings resulting from analyzing the (k)(1) factors are reviewed for substantial evidence. *Meridian Prods.*, 851 F.3d at 1382.

II. Analysis

a. Commerce’s Determination

The relevant language of the scope of the *Orders* is reproduced above. Commerce determined that the scope of the *Orders* covers “certain OCTG”; therefore, “all language thereafter is predicated on the merchandise being OCTG.” Remand Results at 18. Commerce reviewed the definitions of OCTG from the International Trade Commission (“ITC”) and the American Iron and Steel Institute (“AISI”) and ultimately adopted the ITC’s definition of OCTG as “tubular steel products used in oil and gas wells and include casing, tubing, and coupling stock of carbon and alloy steel.” *Id.* at 19-20. Relying on the language of the *Orders* covering “certain OCTG, which are hollow steel products of circular cross-section,” and the ITC’s definition of OCTG, Commerce interpreted the scope to cover hollow steel products of circular cross-section

used in oil and gas wells, except for products expressly excluded from the scope. *Id.* at 17-21. As a result, Commerce determined that the scope included, but was not limited to, tubing, casing, and coupling stock. *Id.* at 20-21, 31. Moreover, Commerce determined that OCTG encompasses those tubular steel products used in well drilling and extracting oil or gas to the surface, and extends to those products used in “other functions associated with an oil and gas well.” *Id.* at 31.

Comparing Plaintiff’s description of the gun carrier tubing and the physical characteristics of the product to this understanding of the scope, Commerce determined that the gun carrier tubing satisfied Commerce’s definition of OCTG and the scope language. *Id.* at 20. The gun carrier tubing satisfied the scope’s requirement that subject merchandise 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).” *Id.* Moreover, Plaintiff’s description that “the gun carrier tubing is a tubular steel product used in oil and gas wells” satisfied the definition of OCTG that Commerce adopted. Remand Results at 20.

b. Commerce’s Interpretation of OCTG is Consistent With The Scope Language and the (k)(1) Factors

In challenging the Remand Results, Plaintiff argues that Commerce gave “no consideration” to certain (k)(1) factors, such as the petition, Commerce’s investigation, and Commerce’s statements in a separate scope proceeding, “other than to dismiss this evidence without justification.” Pl.’s Comments at 6. Plaintiff argues that, for the evidence it did consider, Commerce unjustifiably adopted select statements and disregarded others. *Id.* Contrary to Plaintiff’s assertions, Commerce reviewed each of

the (k)(1) factors and explained the reasoning supporting its determination. The agency's factual findings regarding the (k)(1) factors are supported by substantial evidence.

i. The Petition

Petitioners' proposed scope initially covered "certain OCTG, hollow steel products of circular cross section, including *only* oil well casing and tubing" Scope Ruling Request, Ex. 10 (Petitions for the Imposition of Antidumping and Countervailing Duties) (Apr. 8, 2009) ("Petition") at 5 (emphasis added). In response to the agency's questions regarding the language of the scope and whether it was intended to cover couplings (whether or not attached to the subject OCTG), coupling stock, and thread protectors (whether or not attached to the subject OCTG), petitioners revised their scope language to include coupling stock. See Scope Ruling Request, Ex. 11 (Resp. to the Department's Questionnaire Regarding Vol. I of the Petitions for the Imposition of Antidumping and Countervailing Duties) (Apr. 22, 2009) ("Petitioners' QR Resp.") at 7. The revised proposed scope, in relevant part, read: "The merchandise covered by the investigation consists of certain oil country tubular goods ("OCTG"), hollow steel products of circular cross-section, including *only* oil well casing and tubing, of iron This scope covers coupling stock." Petitioners' QR Resp. at 2-3, 6-7 (emphasis added). Petitioners also added certain tariff classifications to the proposed scope. *Id.*

When Commerce announced the initiation of the investigations, Commerce removed the word "only" from the language of the scope so that the scope covered "certain [OCTG] . . . including oil well casing and tubing" See *AD Investigation*, 74

Fed. Reg. 20,677; *CVD Investigation*, 74 Fed. Reg. 20,681. Commerce's revised scope language was also included in the *AD & CVD Orders*.

Plaintiff places great emphasis on the inclusion of the word "only" in the proposed scope as indicating that the scope of the *Orders* covers only casing, tubing, and coupling stock. Pl.'s Comments at 15-19. In evaluating this argument in the Remand Results, the agency considered the evolution of the scope language and noted that the limiting language initially included in the petition was excluded from the final *Orders*. Remand Results at 24. Therefore, the agency found that "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." *Id.*

To the extent that Plaintiff is suggesting that Commerce was required to determine whether its gun carrier tubing would have been covered by the description of the scope provided in the original petition, Plaintiff is wrong. Commerce, as the investigating authority, has the authority to determine the scope of the merchandise being investigated and its determination may differ from that proposed in the petition. *See Duferco Steel*, 296 F.3d at 1096. When that occurs, as it did here, it is the scope of any resulting antidumping or countervailing duty order that is relevant for determining the coverage of the order and the proposed scope contained in the petition is relevant only to the extent that it aids in the understanding of the scope language of the order. *See* 19 C.F.R. § 351.225(k)(1) (listing "the description of merchandise contained in the petition" as a source that the agency "will take into account" in making its scope determinations); *Duferco Steel*, 296 F.3d at 1097 (stating that the petition may provide guidance to the interpretation of an order, but "cannot substitute for language in the

order itself.”). Any changes in the language may have expanded or restricted the coverage of the proposed scope, but it is the final scope language that is determinative. See *Duferco Steel*, 296 F.3d at 1096-97

Plaintiff faults Commerce for simply noting the change in language between the proposed scope and the final scope without “analyz[ing] the description of the merchandise in the Petition,” Pl.’s Comments at 19, “in light of th[e] context and history of OCTG scope definitions, which was specifically referenced in the Petition,” *id.* at 17. Plaintiff argues that the petitioners drafted their proposed scope to be “essentially identical to orders on OCTG from Argentina, Italy, Korea, and Mexico imposed in 1995 and subject to five-year reviews in 2007.” *Id.* at 16 (internal quotations and citation omitted). Plaintiff states that the antidumping duty order on OCTG from Italy used the identical limiting language contained in the petition. *Id.* at 16.

Plaintiff’s references to the scope coverage of these other investigations and the antidumping duty order on OCTG from Italy do not detract from the agency’s reasoning in this case when there are substantive differences between the scope language of the referenced cases and of the *Orders*. Here, after the agency deliberately deleted the word “only” from the proposed scope, it was reasonable for Commerce not to interpret the scope in the same manner as other previous orders that included that limiting term. As Commerce explained in the Remand Results, if Commerce had “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.” Remand Results at 24.

Plaintiff also posits that Commerce removed the word “only” from the proposed scope to accommodate the addition of coupling stock to the definition so that the scope language would be grammatically correct. Pl.’s Comments at 19. Plaintiff points to no evidence suggesting that the deletion of the limiting language was only for grammatical purposes and not to expand the scope. Even if the court assumes that Commerce was primarily concerned with grammatical correctness, it could have reflected such intent by simply inserting “coupling stock” into the first sentence to state that the scope covered “certain OCTG . . . including only oil well casing, tubing, and coupling stock.”

Plaintiff also contends that the scope of the *Orders* cannot be interpreted to cover all hollow steel products of circular cross section used in an oil well because if that were true, there would have been no need for Commerce or the ITC to specifically add coupling stock to the final scope description. *Id.* at 21. Likewise, however, if the scope of the *Orders* was limited to casing, tubing, and coupling stock, as Plaintiff suggests, Commerce need not have referred to “certain OCTG” and, instead, could have defined the scope as covering only those enumerated products. Here, Commerce reasonably found that the language in the *Orders* reflects a broadening of the scope from that initially proposed by the petitioners. The narrow reading of the *Orders* that Plaintiff proposes conflicts with the plain language of the *Orders* that specifically deleted a limiting term once proposed by the petitioners. Although the description of merchandise in the petition may aid Commerce in making its scope determination, “that description ‘cannot substitute for language in the order itself’ because [i]t is the responsibility of [Commerce], not those who [participated in] the proceedings, to determine the scope of the final orders.” *Meridian Prods.*, 851 F.3d at 1382 (quoting *Duferco Steel*, 296 F.3d at

1097) (alterations in original). That is precisely what Commerce did here when it altered the proposed scope language in initiating the investigations, and adopted the revised language in the *Orders*. As the U.S. Court of Appeals for the Federal Circuit has explained, “[t]he purpose of the petition is to propose an investigation. . . . Commerce’s final determination reflects the decision that has been made as to which merchandise is within the final scope of the investigation and is subject to the order.” *Duferco Steel*, 296 F.3d at 1096 (internal citations omitted).

ii. The ITC’s Investigation and Final Determination

In determining the meaning of the scope language, Commerce reviewed definitions of OCTG referenced in the ITC’s final injury determination and by the AISI, both of which Plaintiff included in its scope ruling request. Remand Results at 19-20, 23-26, 30-31; see *also* Scope Ruling Request, Ex 8 (AISI Manual) at 33; *id.*, Ex. 9 (Certain Country Tubular Goods from China, USITC Pub. 4124, Inv. No. 701-TA-463 (Jan. 2010) (“ITC Final Det.”)) at 5. In 1982, the AISI defined 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.” AISI Manual at 33. In its final injury determination, the ITC referenced AISI as having defined six end-use categories for steel pipes and tubes, one of those categories being OCTG. ITC Final Det. at I-9. In a footnote appended to that sentence, the ITC 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.” *Id.* n.16. In the main text in its final injury determination, under “Product Description,” the ITC defined OCTG as “tubular steel products used in oil and gas wells,” including “casing, tubing, and coupling stock of carbon and alloy steel.” *Id.*

at 5.⁷ Commerce adopted the latter definition as the more relevant to the present determination. Remand Results at 20.

Plaintiff argues that in analyzing the ITC's determination, Commerce made arbitrary choices, electing to adopt some of the ITC's statements and disregard others. Pl.'s Comments at 6. First, it argues that Commerce erred in framing the definition of OCTG as "a choice between the ITC's definition of OCTG . . . and the definition of the AISI" because the ITC specifically incorporated the AISI definition. *Id.* at 7. Next, it argues that the agency disregarded the ITC's specific descriptions for casing, tubing, and coupling stock, each of which described the product's function in "drilling and conveyance of oil and gas." *Id.* at 8-9. According to Plaintiff, the agency disregarded these product details as well as the ITC's more specific definition 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," in favor of the "most generic" statement that OCTG is tubing used in oil and gas wells. *Id.* at 8. Plaintiff further argues that nothing in the ITC's final determination "lend[s] credence to Commerce's conclusion that the ITC's definition went beyond casing, tubing and coupling stock to include other products that are 'associated with an oil and gas well.'" *Id.* at 9. Each of these points were addressed by the agency and each of these arguments fail before this court.

Commerce agreed that the AISI's definition is "not separate and distinct from the ITC's definition" and found, as Plaintiff avers, that the ITC's definition "incorporates AISI[s] definition into it." Remand Results at 30. But the agency found, and reasonably

⁷ Immediately following this definition, the ITC included detailed descriptions for casing, tubing, and coupling stock. ITC Final Det. at 5.

explained, that the ITC broadened AISI's definition to be "more inclusive," so that it is not limited to casing, tubing, and coupling stock. *Id.* at 30-31. Moreover, in explaining that OCTG is not limited to drilling and extraction, the agency stated that "while the AISI definition may only define 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." *Id.* at 30-31. The scope language and the ITC's final determination support these statements.

As Commerce explained, the AISI's definition "does not expressly preclude other 'hollow steel products of circular cross-section'" from being OCTG and "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.'" Remand Results at 19. This inclusive nature of the definition is reflected in the scope. *See AD Order*, 75 Fed. Reg. at 28,553 ("Certain OCTG . . . including oil well casing and tubing"). Moreover, the ITC's final determination discussed "[r]ecent advancements in oil and gas exploration technologies" that "have enabled gas wells to reach locations that were previously deemed cost prohibitive," and "application of new technologies" that has significantly increased gas production. ITC Final Det. at I-10; see *also* Pl.'s Comments on the Draft Remand Results (May 17, 2017) ("Pl.'s Draft Comments"), Ex. 2 (Staff Report to the ITC on OCTG from China) (Dec. 18, 2009) ("Staff Report") at I-11, PJA 14, PRR 4-5, ECF No. 67. These advancements weighed in favor of a more inclusive definition of OCTG than that provided in 1982 by the AISI. Remand Results at 19-20, 20 n.114. Figure 1-3 in the ITC's final determination and Staff Report, which pertains to these "recent advancements," includes a description of

“[c]asing and [t]ubing for shale gas drilling technology” and depicts a five-step process of how “[a]dvances in technology are putting vast shale gas reserves within reach of developers.” ITC Final Det. At I-13 (Figure 1-3); Staff Report at I-13 (Figure 1-3). The figure explains that step three of the drilling process is when “cement is injected through the casing to fix it in place. A perforating gun shoots holes through the casing and cement.” *Id.* Commerce cited this portion of the ITC’s determination, and reasoned that “[i]n light of these recent technological advancements,” it found the ITC’s more inclusive definition to be more relevant to the present determination. Remand Results at 20 (citing ITC Final Det. at I-10 (citing *id.* at Figure 1-3)).

The agency’s intention to give effect to the more inclusive definition is further “evidenced by the specific exclusions within the scope language for drill pipe, unattached couplings, and unattached thread protectors.” *Id.* at 26; *see also id.* at 31 & n.160 (noting that drill pipe is explicitly excluded from the *Orders* but has been included in other antidumping duty orders on OCTG) (citing *Oil Country Tubular Goods From Mexico*, 60 FR 41056 (Dep’t Commerce Aug. 11, 1995) (antidumping duty order)). If Commerce intended the definition of OCTG to be as limited as Plaintiff suggests, such express exclusions would be superfluous. *Id.* at 31. Additionally, that OCTG could include tubular steel products used in other functions associated with an oil and gas well other than drilling and extraction is further supported by the ITC’s report. *Id.* The ITC described casing as “a circular pipe that serves as the structural retainer for the walls of the well . . . [and] is used in the well to provide a firm foundation for the drill string by supporting the walls of the hole to prevent caving in both drilling and after the well is completed”; *i.e.*, casing is not used in the drilling or extraction processes. ITC Final Det.

at 5. Although Plaintiff cites coupling blanks as an example of a product that could be considered “associated with an oil and gas well” . . . that the ITC expressly indicated to be outside the scope,” Pl.’s Comments at 9, this argument is unpersuasive. The ITC stated that coupling blanks were not within the scope, not that coupling blanks could not be considered OCTG. See ITC Final Det. at 5 (“Only coupling stock, not coupling blanks or couplings, is within Commerce’s scope.”).

Plaintiff also points to the ITC’s questionnaires in the preliminary phase of the investigation that requested parties to report only casing and tubing and the ITC’s questionnaires in the final phase of the investigation requesting only casing, tubing, and coupling stock as further evidence that undermines Commerce’s inclusive interpretation of the scope language. Pl.’s Comments at 20. As Commerce explained, however, even if casing, tubing, and coupling stock were the primary OCTG products examined, the ITC never stated that OCTG was limited to only these enumerated products. Remand Results at 25. Similar to the proposition that “a petition need not expressly and specifically identify all the products covered by the order at issue,” *Novosteel SA v. United States*, 284 F.3d 1261, 1269 (Fed. Cir. 2002), the ITC need not collect pricing and other information on every possible product that may be covered by the scope.

Thus, contrary to Plaintiff’s assertions, Commerce analyzed the definitional statements as a whole, taking into consideration the ITC’s determination, and found that an inclusive interpretation is consistent with the scope language. See Remand Results at 26 (“[V]iewed 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.”). The agency’s interpretation is

consistent with the scope language and reasonable in light of the (k)(1) factors discussed herein. “[T]he court will not re-weigh the evidence presented to Commerce and will uphold decisions by Commerce when the agency chooses from among the range of possible reasonable conclusions based on the record.” *Ethan Allen Operations, Inc. v. United States*, 39 CIT __, __, 121 F. Supp. 3d 1342, 1348 (2015) (internal quotation marks and citation omitted).

iii. Prior Scope Rulings

Plaintiff argues that Commerce’s interpretation of the scope of the *Orders* is inconsistent with the agency’s interpretation of the scope in the second remand redetermination in *Bell Supply Co., LLC v. United States*. Pl.’s Comments at 10-11 (citing Pl.’s Draft Comments, Ex. 7 (Final Results of Second Redetermination Pursuant to Remand, *Bell Supply Co., LLC v. United States*, Consol. Court No. 14-00066 (Dep’t Commerce Aug. 11, 2016) (“*Bell Supply* Second Remand Results”))). Specifically, Plaintiff argues that the agency’s definition here is inconsistent with the agency’s statement in *Bell Supply* that OCTG is “intended to be used in the extraction of oil and gas.” Pl.’s Comments at 11 (citing *Bell Supply* Second Remand Results at 17). In considering this very argument, Commerce stated:

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 [with] or contradicts our decision in *Bell Supply*.

Remand Results at 33.

Commerce’s interpretation of the scope in *Bell Supply* addressed the question of “whether unfinished OCTG (including green tubes) produced in the PRC, regardless of

where the finishing of such OCTG takes place,” is included in the scope of the *Orders*. *Bell Supply* Second Remand Results at 2. Thus, the issue in *Bell Supply* was not one concerning the definition of OCTG generally. Rather, the issue was one of country of origin of particular OCTG, specifically green tubes manufactured in the PRC and finished in a third country. *See id.* Nothing in the *Bell Supply* redetermination suggests that the agency was engaged in a comprehensive definition of OCTG that would be definitive here. Therefore, Commerce’s determination in this case does not conflict with that in *Bell Supply*.

c. Substantial Evidence Supports Commerce’s Finding That Gun Carrier Tubing Meets the Definition of OCTG

Having found that Commerce reasonably interpreted the scope to cover hollow steel products of circular cross-section used in oil and gas wells, except for products expressly excluded from the scope, the court also finds that substantial evidence supports Commerce’s determination that Plaintiff’s gun carrier tubing falls within the scope of the *Orders*. In its scope ruling request, Plaintiff described its gun carrier tubing as “mechanical tubing” that is seamless, “custom-designed,” and “engineered for a specific end-use as a perforating gun carrier.” Scope Ruling Request at 2. A “perforating gun” is a “tool[] used in connection with oil and gas drilling and production.” *Id.* at 4. Plaintiff explained that “[a] perforating gun assembly is a single-use device used to perforate existing oil and gas wells in preparation for production using explosive oil charges,” and that “[p]erforating tools generally consist of a tube called the carrier[,] which holds the charge holder” *Id.* (internal quotation marks and citations omitted). The perforating gun is “lowered into the well and fired by the detonation of explosive charges [that] are contained inside the tube charge holder.” *Id.* Commerce, therefore,

reasonably found that the gun carrier tubing is a hollow steel product of circular cross section that is used in oil and gas wells. Remand Results at 20. Moreover, as explained below, the fact that the gun carrier tubing is part of a perforating system does not preclude the product from meeting the definition of OCTG and being covered by the scope of the *Orders*. See *id.*

Notably, Commerce did not interpret the scope of the *Orders* to cover only OCTG products that are necessary for “every oil well and every oil well completion” as Plaintiff suggests. Pl.’s Comments at 13. Commerce explained that Plaintiff’s product, gun carrier tubing, is covered by the scope of the *Orders* because “it is essential to extracting oil and gas from the shale formations which are hydraulically fractured.” Remand Results at 32. In its scope ruling request, Plaintiff explained that gun carrier tubing is incorporated into a perforating gun used to detonate inside oil wells. Scope Ruling Request at 2. “[P]erforating guns . . . perforate wells in preparation for production,” *id.*, and “[i]t is through these perforations that oil and gas flows into the well bore and up to the surface,” *id.* at 4. Moreover, Plaintiff highlighted the essential function of the gun carrier tubing by stating that “[a]ll the efforts that go into well completion lead to the defining moment when the perforating guns punch holes through OCTG casing and rock to connect the oil or gas reservoir to the well.” *Id.* at 5. In light of this evidence, Commerce reasonably stated that “without perforation of the casing, which requires gun carrier tubing, there would be no operational oil and/or gas well.” Remand Results at 32. The court does not read Commerce’s determination as conflating gun carrier tubing with a perforating gun or as indicative of a finding that gun carrier tubing itself is capable of perforating the casing of an oil well, as Plaintiff

suggests. Pl.'s Comments at 14. Indeed, in its brief Plaintiff recognizes that the gun carrier tubing is an "integral component of a perforating gun," *id.* at 13, and at oral argument, Plaintiff stated that its gun carrier tubing is not used for any purpose other than to be manufactured into perforating guns, Oral Arg. at 1:10:38-1:11:11.⁸

Next, Plaintiff posits that the gun carrier tubing is never used in an oil well directly but as a "component of a perforating gun." *id.* at 13. As Commerce explained, however, "nothing in the scope of the *Orders* indicates that OCTG must be a stand-alone product." Remand Results at 34. In response to this argument below, Commerce cited drill pipe as an example of OCTG that would be covered by the scope but for its specific exclusion. *id.* at 34. Drill pipe "is that tubular member which is used as a tool to rotate the bit and to carry circulating drill fluid down to the bit where it is circulated back on the outside of the pipe and carries the cuttings to the surface where they are removed on a shale shaker prior to the return of the drilling mud to the system." AISI Manual at 33. Thus, drill pipe is an OCTG product that is used in concert with another component and removed from the well after use. *See id.*; Remand Results at 34 ("[D]rill pipe is a type of OCTG and it is removed from a well after its use in the drilling process."). This reasoning supports Commerce's determination that OCTG need not be a stand-alone product.

⁸ While Plaintiff argues that "it is not essential to use perforating guns to extract the oil or gas as it depends upon the formation and the completion type," Pl.'s Comments at 13, this is immaterial with respect to the specific inquiry here — whether gun carrier tubing meets the definition of OCTG and falls within the scope — because by Plaintiff's own admission, the only use of gun carrier tubing is to be manufactured into perforating guns that are used in the drilling process, *see id.*

d. Commerce did not Unlawfully Revise the Scope

Plaintiff states that its gun carrier tubing is mechanical tubing because it is made to an internal specification based on, but exceeding, the American Society for Testing and Materials (“ASTM”) A-519 standard developed by its engineers. PI.’s Comments at 22.⁹ Plaintiff argues that mechanical tubing was not part of the original investigation and, thus, Commerce unlawfully revised the scope. *Id.* at 22-24; *see also* Confidential DynaEnergetics U.S., Inc.’s Br. in Supp. of its Rule 56.2 Mot. for J. on the Agency R. (PI.’s Br.) at 29-35, ECF No. 32 (arguing that neither Commerce nor the ITC defined OCTG to include mechanical tubing, and that the ITC treated OCTG and mechanical tubing separately in its material injury investigation). Moreover, Plaintiff states that “Commerce has not explained how it would determine what characteristics differentiate OCTG from mechanical tubing.” PI.’s Comments at 22. Additionally, Plaintiff advocates for a formal inquiry under the (k)(2) factors because none of the (k)(1) factors “discuss[] a product with the characteristics of [gun] [c]arrier [t]ubing or demonstrates any intention to include other tubing products – such as mechanical tubing – in the investigation on OCTG.” *Id.* at 25.

A plain reading of the scope shows that it clearly and unambiguously covers OCTG “whether or not conforming to API or non-API specifications.” *AD Order*, 75 Fed. Reg. at 28,553. This language indicates that standards and specifications are irrelevant when determining whether a product is within the scope of the *Orders*. Thus, Commerce’s statement that “whether gun carrier tubing conforms to an API or ASTM

⁹ The internal specification exceeds the requirements of the ASTM A-519 standard “in terms of its enhanced chemistry, impact resistance properties and different testing requirements.” PI.’s Comments at 22.

specification associated with OCTG is not determinative of whether gun carrier tubing is covered by the scope” is reasonable. Remand Results at 21. As Commerce made clear, if a product is a tubular steel product used in an oil or gas well and is not otherwise excluded from the scope, Commerce considers it OCTG, even though the parties might define it or advertise it as mechanical tubing. *Id.* at 28. For example, coupling stock is included in the scope of the *Orders* even though the petitioners alerted the agency that coupling stock could be imported under either OCTG or mechanical tubing classifications. Petitioners’ QR Resp. at 3 (stating that “[c]oupling stock is imported either under the OCTG classifications or under the seamless mechanical tubing subheading of the HTSUS. . . . The HTSUS subheadings for coupling stock, however, are a basket category and will include other types of mechanical tubing that are not coupling stock.”).

Plaintiff contends that the scope language regarding specifications was intended to address only limited service OCTG and OCTG green tubes which do not meet the API 5 CT standard. PI.’s Comments at 24. Plaintiff relies on a response by petitioners to Commerce’s request to define limited service OCTG products and green tubes. *Id.* The petitioners defined the former as “consist[ing] of casing and tubing products that do not meet . . . [API] standards for OCTG,” and the latter as “generally classified as semi-finished pipes used to make casing and tubing products[, and] . . . are typically non-API certified” Petitioners’ QR Resp. at 5-6. As Commerce explained, however, “if this language were meant to address only limited service OCTG and green tubes, the scope language would have made specific reference to that.” Remand Results at 35.

Contrary to Plaintiff's argument that "Commerce has not explained how it would determine what characteristics differentiate OCTG from mechanical tubing," Pl.'s Comments at 22, Commerce explained that the gun carrier tubing is OCTG because it is used in oil and gas wells and meets the scope's requirements. Remand Results at 28; *see also AD Order*, 75 Fed. Reg. at 28,553 (reciting the scope language). No other mechanical tubing was before the agency and it was under no obligation to address such hypothetical questions.

With respect to Plaintiff's argument that Commerce and the ITC treated OCTG and mechanical tubing as distinct product types, *see* Pl.'s Br. at 29-30, Commerce took notice that although its antidumping duty questionnaire did not include an "other" category in addition to casing, tubing, and coupling stock, the questionnaire included language informing a company that believed it had "reason to report its U.S. sales on a different basis," to "contact an official in charge before doing so." Remand Results at 26 (quoting Scope Ruling Request, Ex. 13 (Commerce's Sec. C Antidumping Duty Questionnaire)). It reasoned that if a manufacturer of gun carrier tubing responding to the questionnaire believed that its product did not fit the matching criteria, "it need only contact the [agency] 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." Remand Results at 25.

With respect to Plaintiff's request for a formal scope inquiry because none of the (k)(1) factors specifically discuss gun carrier tubing or mechanical tubing, Pl.'s Comments at 24-26, Commerce properly explained that "[t]he 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 those sources and especially in the scope language – which must be written in general terms – encompass the particular article in question.” Remand Results at 32-33; *see also id.* at 35 (“[N]ot all products must be expressly identified by a petitioner in order to be covered by a scope.”) (citing *Novosteel SA*, 284 F.3d 1261); *Novosteel SA*, 284 F.3d 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.”) The regulations recognize that scope determinations may be necessary because scope orders must be written in general terms. See 19 C.F.R. § 351.225(a). Indeed, “scope inclusions are written in broad terms and then specific exclusions are carved out from the general terms.” *Power Train Components, Inc. v. United States*, 37 CIT __, __, 911 F. Supp. 2d 1338, 1343 (2013), *aff’d* 565 F. App’x. 899 (Fed. Cir. 2014). Here, there are no specific exclusions for mechanical tubing or gun carrier tubing; thus, Commerce’s finding that Plaintiff’s gun carrier tubing is included in the scope of the *Orders* is supported by substantial evidence.

e. Commerce’s CBP Instructions are not impermissively retroactive

Plaintiff’s challenge to the scope determination having failed, the court turns to Plaintiff’s challenge to Commerce’s instructions to CBP. These customs instructions ordered CBP to “[c]ontinue to suspend liquidation of entries of . . . certain tubing for perforated gun carriers imported by DynaEnergetics” subject to the *Orders*. CBP Message Nos. 6057301 (AD) and 6057302 (CVD) (Feb. 26, 2016), PJA Tab 9, PR 21,

ECF No. 67.¹⁰ Plaintiff challenges Commerce's customs instructions as "retroactive" and "unreasonable." Pl.'s Comments at 26-28. Relying on *AMS Assocs., Inc. v. United States*, 737 F.3d 1338 (Fed. Cir. 2013), Plaintiff argues that the Remand Results clarified the language of the *Orders* and this clarification should only have prospective effect. *Id.* at 27 ("[W]hen Commerce clarifies the scope of an existing antidumping duty order that has an unclear scope, the suspension of liquidation and imposition of antidumping cash deposits may not be retroactive but can only take effect on or after the date of the initiation of the scope inquiry.") (quoting *AMS*, 737 F. 3d at 1344) (alteration in original) (internal quotation marks omitted). Plaintiff further relies on *United Steel & Fasteners, Inc. v. United States*, 41 CIT ___, 203 F. Supp. 3d 1235 (2017) and *Sunpreme Inc. v. United States*, 40 CIT ___, 145 F. Supp. 3d 1271 (2016) to support its position. *Id.* at 27-28.

As noted, if the agency can determine, based solely upon the application and the (k)(1) factors, whether a product is included within the scope of an order, the agency "will issue a final ruling as to whether the product is included within the order." 19 C.F.R. § 351.225(d). This is what the agency did here. Pursuant to 19 C.F.R. § 351.225(l)(3), "[i]f the [agency] issues a final scope ruling, under [] paragraph (d) . . . of this section, to the effect that the product in question is included within the scope of the order, any suspension of liquidation under paragraph (l)(1) or (l)(2) of this section

¹⁰ On March 28, 2016, Commerce amended these instructions in light of the preliminary injunction entered by this court on March 14, 2016. See CBP Message No. 6088305 (Mar. 18, 2016), PJA Tab 10, PR 22, ECF No. 66; CBP Message No. 6088307 (Mar. 28, 2016), PJA Tab 11, PR 23, ECF No. 67.

will continue.” 19 C.F.R. § 351.225(l)(3) (emphasis added). Thus, the regulations contemplate the possibility that suspension of liquidation had already begun.

In its briefing, Plaintiff does not allege that its product was not subject to suspension of liquidation so that Commerce’s instructions to “continue” suspension of liquidation of the merchandise would be appropriate in that limited (grammatical) sense.¹¹ Because the court finds that Commerce reasonably interpreted the scope of the *Orders* to include the gun carrier tubing and because the gun carrier tubing already was subject to suspension of liquidation, Commerce’s instructions to CBP to continue suspension of liquidation were in accordance with law. *See id.*; *Shenyang Yuanda Aluminum Indus. Eng’g Co. v. United States*, 38 CIT ___, ___, 961 F. Supp. 2d 1291, 1302-1305 (2014), *aff’d*, 776 F.3d 1351 (Fed. Cir. 2015).

Plaintiff’s reliance on *AMS*, 737 F. 3d 1338 to challenge Commerce’s instructions is unconvincing. In *AMS*, Commerce issued clarification instructions during the course of an administrative review that interpreted the scope of an existing antidumping duty order to cover laminated woven sacks produced in China with non-Chinese fabric. 737 F.3d at 1340-41. CBP had previously considered these sacks to be of non-Chinese origin and was not suspending liquidation of them. *Id.* at 1340. Pursuant to its “clarification,” Commerce instructed CBP to suspend liquidation of those products retroactive to the preliminary determination in the original investigation. *Id.* at 1340-1341. In so doing, Commerce exceeded its authority under 19 C.F.R. § 351.225(l)(2) because the antidumping duty order did not clearly cover that plaintiff’s merchandise.

¹¹ At oral argument, Plaintiff’s counsel stated that Customs had been suspending liquidation of Plaintiff’s product. Oral Arg. at 30:55-31:03.

Id. at 1343. The court held that “when Commerce ‘clarifies’ the scope of an existing antidumping duty order that has an unclear scope, the suspension of liquidation and imposition of antidumping cash deposits may not be *retroactive* but can only take effect ‘on or after the date of the initiation of the scope inquiry.’” *Id.* at 1344 (quoting 19 C.F.R. § 351.225(l)(2)).

The circumstances of *AMS* do not exist here. Unlike in *AMS*, Commerce did not clarify an ambiguous scope but, instead, applied the language of the scope to the gun carrier tubing using the definition of OCTG derived from the scope’s language itself and the ITC’s investigation. Commerce was not required to initiate a formal scope inquiry pursuant to 19 C.F.R. § 351.225 “when it wishe[d] to issue a ruling that [did] not clarify the scope of an unambiguous order.” *AMS*, 737 F. 3d at 1344. Rather,

Commerce must only follow the procedures outlined in § 351.225 when it wishes to clarify an order that is unclear. To hold otherwise would permit importers to potentially avoid paying antidumping duties on past imports by asserting unmeritorious claims that their products fall outside the scope of the original order. Importers cannot circumvent antidumping orders by contending that their products are outside the scope of existing orders when such orders are clear as to their scope. Our precedent evinces this understanding. We have not required Commerce to initiate a formal scope inquiry when the meaning and scope of an existing antidumping order is clear.

Id. (citing *Huaiyin Foreign Trade Corp. (30) v. United States*, 322 F.3d 1369, 1378-79 (Fed. Cir. 2003)). The court is not persuaded that the agency’s voluntary request for remand to explain its determination in more detail constitutes a basis for finding that the language of the scope was unclear. See *SKF USA, Inc. v. United States*, 254 F.3d 1022, 1028 (Fed. Cir. 2001) (“[T]he agency may request a remand, without confessing error, in order to reconsider its previous position.”); see also Remand Results (“DynaEnergetics states that the

[agency's] determination is 'based on a new definition of OCTG.' We disagree.

The definition we have used was the same definition used by the ITC, and the language of the scope reflects that definition.”) (footnote omitted).

The manner in which Commerce conducted the proceeding in this case is analogous to the way in which Commerce conducted the proceeding in *Shenyang*, 961 F. Supp. 2d 1291, which the court finds instructive here. In *Shenyang*, Commerce determined that the language of the antidumping and countervailing duty orders on aluminum extrusions from the PRC and the description of products subject to the scope request — curtain wall units — were dispositive such that it was unnecessary to consider the (k)(2) factors. *Id.* at 1294. Liquidation of the subject merchandise had already been suspended since the publication of the preliminary determinations in the antidumping and countervailing duty investigations. *Id.* at 1303. Accordingly, after Commerce determined, based solely upon the application and the (k)(1) factors, that the scope of the orders included the subject merchandise, it instructed CBP to “[c]ontinue to suspend liquidation of entries” of the subject merchandise. *Id.* at 1302. As the court in *Shenyang* explained, “[when], as here, a scope ruling confirms that a product is, and has been, the subject of an order, the [agency] has not acted beyond its authority by continuing the suspension of liquidation of the product.” *Id.* at 1304. Unlike *AMS* and like *Shenyang*, Commerce here “added no new products to the scope” but “merely confirmed what had previously been the case.” *See id.* at 1303.

Plaintiff's reliance on *Fasteners*, 203 F. Supp. 3d at 1252, 1255 and *Sunpreme*, 145 F. Supp. 3d at 1289, does not persuade the court to hold otherwise. Plaintiff cites *Sunpreme* for the proposition that “goods should only be considered to fall within the

scope of antidumping and countervailing duty orders once the agency with the capacity to interpret them has done so.” Pl.’s Comments at 28 (quoting *Sunpreme*, 45 F. Supp. 3d at 1289). In *Supreme*, the court found that CBP “acts beyond its authority” when it “attempts to determine whether a product falls within the scope based upon factual information that the scope language does not explicitly call on CBP to consider.” 145 F.Supp.3d at 1285. Yet, the court also stated that

if Commerce issues a final scope ruling based solely upon the application, and suspension of liquidation had already occurred because CBP properly determined the plain language of the antidumping or countervailing duty order included the merchandise, any such suspension of liquidation will continue upon a final scope ruling to the effect that the product is included within the scope of an antidumping or countervailing duty order.

Id. at 1287. *Fasteners*, on the other hand, is factually distinguishable because there was an absence of suspension of liquidation of plaintiff’s entries by Customs. 203 F. Supp. 3d at 1240-41; *id.* at 1250 (recognizing that “[t]he relevant regulatory provisions are ambiguous regarding the date that the Department must commence suspension of liquidation when (1) Commerce has issued a final affirmative scope ruling without having initiated a formal scope inquiry and (2) liquidation has not been suspended”); *id.* at 1253-54 (distinguishing *Shenyang* because “in *Shenyang*, Commerce instructed Customs to continue to suspend liquidation, as opposed to suspending liquidation for the first time”).

CONCLUSION

For the foregoing reasons, the court finds that Commerce reasonably determined that gun carrier tubing is included in the scope of the *Orders*. Because that conclusion was reasonable, the court finds that the factors set forth in 19 C.F.R. § 351.225(k)(1) were dispositive such that Commerce properly ended its analysis without considering

the (k)(2) factors. See 19 C.F.R. § 351.225(k)(1),(2). Moreover, because the court finds that Commerce reasonably interpreted the scope language of the *Orders* to include the gun carrier tubing and that liquidation of the gun carrier tubing had been suspended, Commerce's instructions to CBP to continue suspension of liquidation of the merchandise were not erroneous. Plaintiff's request that the court remand the Remand Results is DENIED. Judgment will enter accordingly.

/s/ Mark A. Barnett
Judge

Dated: March 16, 2018
New York, New York