1. This Guide

This publication is intended to provide guidance and information to the trade community. It reflects the position on, or interpretation of, the applicable laws or regulations by the Department of Home Affairs (the Department) as of the date of publication. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

This Tariff Classification Guide seeks to clarify the policy of the Department on the tariff classification of goods under the subheadings for line pipe of a kind used for oil or gas pipelines in Chapter 73 of Schedule 3 (the Tariff) of the Customs Tariff Act 1995 (the Act).

This document does not establish a new approach to classification, deviate from recognised practices in classification principles or offer a new interpretation. It provides clarification only of the views of the Department on the correct classification of pipe to these subheadings and does not constitute legal advice.

1.1. Position Summary

It is the position of the Department that subheadings 7304.11.00, 7304.19.00, 7305.11.00, 7305.12.00, 7305.19.00, 7306.11.00 and 7306.19.00 only cover steel or iron pipe that is:

- Line pipe, and
- of a kind used for high-pressure long-distance transmission pipelines for petroleum oils or fuel gas, such as natural gas and methane.

In order to be classified to these subheadings pipe must be line pipe commonly used for oil or gas pipelines, or must be the same or so similar to that used in oil or gas pipelines that it could be so used even though imported for other uses. Pipe that does not fulfil this criterion must not be classified under these subheadings, but rather should be classified as other types of pipe.

When claiming classification under these subheadings the importer must have documentation to prove that: the imported pipe is for use in oil or gas pipelines; or is otherwise qualitatively the same in all respects as line pipe that is used in oil or gas pipelines, and therefore is of the relevant “kind”.

1.2. What this Guide does

This Guide has been developed to assist importers and brokers in classifying the goods they are bringing into Australia.

This Guide does not replace the Customs Tariff Act 1995.

The classification of goods can be complex. While care has been taken to ensure that the classifications given are correct at the time of publication, only the latest official version of the Act is authoritative. You should still consult the Act to confirm classifications.
If you are importing pipe commercially and are in doubt about the classification of your goods, it may be advisable to seek professional advice or approach the Department for assistance. We recommend that commercial importers or brokers use the Tariff Advice System where they believe that classification is uncertain. Relevant information and contact details can be found on the Australian Border Force’s website https://archive.homeaffairs.gov.au/bus/cargo-support-trade-and-goods/importing-goods/tariff-classification-of-goods.

1.3. Previous Treatments

The information in this Guide supersedes any previous treatment of the goods in question. Where there has been, or appears to have been, different treatment of the goods in one or more areas in the past by the Department of Home Affairs (including by the former Department of Immigration and Border Protection or the Australian Customs and Border Protection Service), or differing interpretations in previous publications or notices, this Guide will be taken as giving the current accepted practice.

2. The Subheadings

All references in this Guide to tubes, pipes, or line pipe, is to iron (excluding cast iron) or steel pipe. This Guide does not cover goods made of other materials. This Guide does not specifically discuss subsea tubes and pipes for offshore pipelines but the same principles apply.

The relevant tariff classification headings covered by the Guide are 7304, 7305 and 7306. These headings do not include tube or pipe fittings. Fittings are covered by Heading 7307 – Tube or pipe fittings (for example, couplings, elbows, sleeves) of iron or steel.

For reference, full extracts of the headings are included at Attachment A. The focus of this Guide are the following subheadings:

7304 TUBES, PIPES AND HOLLOW PROFILES, SEAMLESS, OF IRON (OTHER THAN CAST IRON) OR STEEL:

7304.1 - Line pipe of a kind used for oil or gas pipelines:
7304.11.00 - Of stainless steel
7304.19.00 - Other

7305 OTHER TUBES AND PIPES (FOR EXAMPLE, WELDED, RIVETED OR SIMILARLY CLOSED), HAVING CIRCULAR CROSS-SECTIONS, THE EXTERNAL DIAMETER OF WHICH EXCEEDS 406.4 MM, OF IRON OR STEEL:

7305.1 - Line pipe of a kind used for oil or gas pipelines
7305.11.00 - Longitudinally submerged arc welded
7305.12.00 - Other, longitudinally welded
7305.19.00 - Other

7306 OTHER TUBES, PIPES AND HOLLOW PROFILES (FOR EXAMPLE, OPEN SEAM OR WELDED, RIVETED OR SIMILARLY CLOSED), OF IRON OR STEEL:

7306.1 - Line pipe of a kind used for oil or gas pipelines
7306.11.00 - Welded, of stainless steel
7306.19.00 - Other
3. Tariff Classification

The correct classification of goods involves two fundamental steps;

1. Identification of the goods, and

Correct identification of goods is essential to classification. Identification is achieved by an objective, analytical assessment of the goods at the time of importation. Goods are classified in the condition in which they are imported, regardless of how the goods will be used or what modifications will be made to them after import. Identification is based primarily on physical characteristics but sufficient knowledge about the goods is necessary to identify goods to the level the Tariff requires.

Most goods will be, at a minimum, identified by name, by the material they are made of, by the class of goods they belong to and by the use for which they are designed.

The Tridon principles of identification

In Re Tridon Pty Limited and Collector of Customs [1982] AATA 119 (17 June 1982), the Administrative Appeals Tribunal (AAT) provided guidance on the principles for identifying goods. These principles have been noted with approval by the Federal Court. Of particular significance to the issue of this Guide are points (i), (iii), (iv) and (vii).

The Eight Principles of Identification as outlined in Tridon

(i) Identification must be objective, having regard to the characteristics which the goods, on informed inspection, present.

(ii) The identification of goods cannot be controlled by the descriptions of goods adopted in the nomenclature of the Tariff.

(iii) Nevertheless in identifying goods it is necessary to be aware of the structure of the nomenclature, the basis on which goods are classified and the characteristics of goods which may be relevant to the frequently complex task of classification.

(iv) In the identification of goods, knowledge of how those who trade in the goods describe them will usually be relevant, but not necessarily conclusive.

(v) All the descriptive terms, both specific and generic, by which the goods may fairly be identified may be relevant to the classification of the goods within the Tariff.

(vi) Descriptive terms may be of varying degrees of specificity (e.g. windscreen wiper blade refills, parts for a windscreen wiper or parts for a motor vehicle). Generic descriptions may be by reference to the materials or substances from which the goods are manufactured.

(vii) Identification will frequently extend to characterisation of goods by reference to their design features, or by reference to their suitability for a particular use where those characteristics emerge from informed inspection of the goods as imported. The extent to which these characteristics may be relevant to the ultimate classification of the goods and whether evidence of the use to which goods are put after importation is relevant, will depend upon the language of the Tariff Nomenclature.

(viii) Composite goods, notwithstanding that they have components which are separately identifiable, may nevertheless be identifiable in combination as a new entity if the identity of the separate units is subordinated to the identity of the combination.

A principle of classification is to identify what goods are, not how a particular importer intends to use them. The design and objective features of goods, and not the intended use of the goods after importation, is usually the key.

However, many terms of headings and subheadings describe goods by function or use and, as pointed out at Tridon principle (vii), the design features of goods, or reference to their suitability for a particular use, may be relevant for classification. The identification process requires careful consideration of the attributes of goods to determine if the goods are designed for, or suitable for, a particular use described in the Tariff.
All the necessary facts about the characteristics and features of the goods as imported must be acquired by importers and/or their representatives before identifying and classifying goods. Supporting documentation must be made available to the Department if a claimed classification is queried.

3.1. Line pipe of a kind used for oil or gas pipelines

3.1.1. Context and the Structure of the Nomenclature

The Tariff is based on the International Convention on the Harmonized Commodity Description and Coding System (HS) to which Australia is a signatory. The HS was developed by the World Customs Organization (WCO) and the maintenance of the HS is a WCO priority.

It is the policy of the Department to maintain the international uniformity of the classification of goods under the HS.

More than 200 countries and economies use the HS as a basis for their customs tariffs. The principal purpose of the HS for the WCO and its members is uniform classification principally for the collection of international trade statistics.

Classification is internationally identical to the six-digit level in all countries using the HS.

In the 1980s, the WCO undertook a major review of the previous system, the Customs Co-operation Council Nomenclature, to create the HS (in force from 1988). The structure for the classification of metals changed radically and the review process created the relevant three headings that are the focus of this Guide: 7304, 7305 and 7306 and their attendant subheadings. These headings remain essentially unchanged to the current HS.

Article 7 of the HS provides for the preparation of Explanatory Notes “as guides to the interpretation of the Harmonized System”. These are known as the Harmonized System Explanatory Notes (HSENs). The WCO maintains the HSENs as guidance material in the interpretation of the Harmonized System for WCO members.

In Air International Pty Ltd v Chief Executive Officer of Customs [2002] FCA 355:

…it may be noted, that the customs classification regime and particularly the interpretative rules have their current origin in international Treaty, namely the Convention. As such they should receive an interpretation consistent with the purpose of the treaty and in accordance with the general rules of treaty interpretation, that is to say, in good faith and in accordance with the ordinary meaning of the words, but in the light of its object and purpose cf Applicant A v Minister for Immigration and Ethnic Affairs (1997) 190 CLR 225 at 251-253. [25]

3.1.2. Structure of Headings 7304, 7305 and 7306

Full extracts of the headings are at the end of this document.

Under Headings 7304, 7305 and 7306, the first two subheadings were added in the restructure of the 1980s specifically for pipe, casing and tubing of the oil and gas industry – “line pipes of a kind used for oil or gas pipelines” and “casing, tubing and drill pipe of a kind used for oil or gas drilling”. The intention of the structure is to provide subheadings and to target trade statistics for pipe, casing and tubing that is specific to the oil and gas industry for high-pressure long-distance transmission.

The only industry-specific subheadings for pipes under these headings is for the oil and gas industry. All the other subheadings distinguish pipe and tubing etc. by cross-section size, manufacture process or welding, regardless of the industry in which they are used. Tubes, pipes and hollow profiles that are not line pipe of a kind used for oil or gas pipelines or casing, tubing or drill pipes of a kind used for drilling for oil or gas, are not classified in these subheadings but in the following subheadings. This is confirmed by the HSENs to each heading. These HSENs provide examples of the types of pipe covered by each heading and in each instance pipes, casing and tubing for oil and gas production are listed first, followed separately by pipes used for other purposes.
HSENs to Heading 7304

“This heading includes

- line pipes of a kind used for oil or gas,
- casing, tubing and drill pipes of a kind used in drilling for oil or gas,
- tubes and pipes suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces, feedwater heaters for power stations,
- galvanised or black tubes (so-called gas tubes) for high or medium pressure steam, or gas or water distribution in buildings, as well as
tubes for water or gas street distribution mains.

In addition tubes and pipes are used for the manufacture of
- parts for automobiles or for machinery,
- of rings for ball bearings, cylindrical, tapered or needle bearings or
- for other mechanical uses,
- for scaffolding, tubular structures or building construction.”

HSENs to Heading 7305

“This heading includes

- line pipes of a kind used for oil or gas,
- casings for oil or gas wells,
- tubes for long distance waterlines or slurry mains for coal or other solid materials,
- tubes for piling or structural columns, as well as
- hydroelectric conduits, usually reinforced with rings.”

HSENs to Heading 7306

“This heading includes

- line pipes of a kind used for oil or gas,
- casing and tubing of a kind used in drilling for oil or gas,
- tubes and pipes suitable for use in boilers, superheaters, heat exchangers, condensers, feedwater heaters for power stations,
- galvanised or black tubes (so-called gas tubes) for high or medium pressure steam or water distribution in buildings, as well as
tubes for water or gas street distribution mains.

In addition tubes, pipes and hollow profiles are used for
- the manufacture of parts for automobiles or for machinery, bicycle frames, prams, or
- for other structural uses, scaffolding or tubular structures or building construction.
- "Open seam" tubes are used, for example, as frames for metal furniture.”
3.1.3. Oil or gas pipelines

In the context of these subheadings, the position of the Department is that:

- 'Oil or gas' means petroleum oils or fuel gases, such as natural gas and methane, and
- 'pipelines' means high-pressure long-distance transmission pipelines


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pipeline

noun 1. a pipe or several pipes together forming a conduit for the transportation of petroleum, petroleum products, natural gas, etc.

Pipeline

1 A long pipe, typically underground, for conveying oil, gas, etc. over long distances.

The position of the Department, therefore, is that line pipes of the relevant subheadings are those of a kind used for high-pressure long-distance petroleum oils or fuel gas, such as natural gas and methane, transmission pipelines only. (Noting that low pressures are not used for long-distance transmission.) These subheadings do not include pipes used, for instance, in petroleum production and processing plants, gas manufacturing plants, tank farms, and gas distribution systems.

3.2. Identifying pipe of a kind used for oil or gas pipelines

Of a kind used for

The term ‘of a kind used for’ is frequently found in the Tariff and in legislation in general, and the Federal Court has made several decisions regarding interpretation of it.

The term “of a kind used for” refers to a class, category or genus of goods with characteristics in common. The term requires the genus, class or type of goods encompassed by the description to be identified first.

In this case, the class or genus is determined by use: of a kind used for transmission of oil or gas. Many headings and subheadings in the Tariff include the term ‘used for’, or similar, to describe goods. As pointed out by the AAT in Tridon principle (vii) the design and suitability of goods for a particular use is relevant depending on the language of the Tariff.

The genus or class is line pipe used for oil or gas pipelines, i.e. high-pressure long-distance petroleum oils and gas transmission pipelines. This is a specific, specialised class of pipes. Pipe that is the same in all respects to such pipe and fit for purpose for such use, even though it is not intended to be so used, is of a kind to this genus or class and must be classified under the same line pipe subheadings.

Pipe that is not an identical product and is not fit for purpose for such use is not of a kind to this genus or class and cannot be classified under the line pipe subheadings.

Line pipe used for oil or gas transmission pipelines consists of a high strength carbon steel material and has to be manufactured to Standard Specifications that demonstrate suitability for use in oil or gas transmission. This is a crucial requirement of the class of pipe. Whether line pipe will be used for oil or gas pipelines or for any other purpose, it must have been engineered to a standard for oil or gas line pipe to be identified as belonging to this class or genus of pipe. Evidence, such as certificates, must specifically identify the line pipes in a shipment.
Appropriate standards

The Australian Standard is AS 2885 – Pipelines – Gas and liquid petroleum. The most commonly used international standard is the American Petroleum Institute's API Specification 5L Specification for Line Pipe. The 46th edition of API Specification 5L has recently been published. The International Organisation for Standardization (ISO) equivalent specification is ISO 3183. Because transmission pipelines carry fluids under high pressure, the standards specify, for instance, the quality of steel material, welding and the thickness of the walls. Claims that an imported pipe complies with any relevant international standard or specification for line pipe for use in high-pressure long-distance transmission pipelines must be supported by evidence.

For use in Australian pipelines, AS 2885 states that line pipe made to API 5L or ISO 3183 specification is ‘necessary but insufficient’, as additional testing is required for Australian use. Therefore, line pipe imported into Australia for use in an Australia pipeline will need to comply with AS 2885. For tariff classification purposes, however, line pipe made to one of the international standards is accepted as line pipe of a kind used for oil or gas pipelines, even where it is imported for other uses, provided it is not rendered unsuitable for oil or gas pipeline use by other features.

Line pipe must be correctly marked as specified by the relevant Standard so that it can be identified. API 5L 45th edition specification for marking is at Section 11 Markings. At 11.2.2 the following locations are specified:

a) For pipe D* ≤ 48, 3 mm (1.900 in), the markings shall be in one or more of the following locations:
   1) on a tag fixed to the bundle,
   2) on the straps or banding clips used to tie the bundle,
   3) on one end of each pipe,
   4) continuous along the length;

b) For pipe with D > 48, 3 mm (1.900 in), unless a specific surface is specified in the purchase order, the markings shall be:
   1) on the outside surface of the pipe, in the sequence listed in 11.2.1, starting at a point between 450 mm and 760 mm (1.5 ft and 2.5 ft) from one of the pipe ends, or
   2) on the inside surface of the pipe, starting at a point at least 150 mm (6.0 in) from one of the pipe ends;

(*D = specified outside diameter of pipe, expressed in millimetres (inches)

Line pipe manufactured to any other standard is not of the kind, class or genus of line pipe used for oil or gas pipelines, regardless of the quality of the standard. Such pipe is not classified to subheadings 7304.1, 7305.1 or 7306.1, but rather under other subheadings as other pipe. In order for line pipe to be classified under one of the subheadings as line pipe of a kind used for oil or gas pipelines, the line pipe must have been produced in a pipe mill to one of the internationally accepted standards that are commonly used in oil or gas transmission pipelines, regardless of whether it is to be used or is suitable for other purposes.

Compliance with one of the above standards is not sufficient to identify pipe as line pipe of a kind used in oil or gas pipelines if it has other features that are not found commonly in this specific kind of pipe.

Coatings

Pipelines are subjected to external corrosion by atmospheric, cathodic or galvanic action. For safety purposes, in order to prevent faults and resulting leaks, line pipe for transmission pipelines is covered by specialised epoxy coating, most commonly fusion bonded epoxy (FBE) or a three layer coating (3PE), for protection from corrosion and rusting. This may not be present at importation but applied after importation. Absence of such a coating would not disqualify the pipe from being classified as line pipe.

Galvanised pipe however, is not commonly, if ever, used in oil or gas pipelines. The zinc coating would compromise the pipe and also prevents effective welding of joints. Therefore, galvanised pipe is not line pipe used in oil or gas pipelines nor of the class or kind used for oil or gas pipelines.

Galvanized pipe is not classifiable as line pipe of a kind used in oil or gas pipelines regardless of the standard of manufacture. This is supported by the US Customs and Border Protection decision HQ954256, with which the Department agrees.
Pipe length

Line pipes for oil or gas pipelines are typically supplied in 12m (40ft) lengths, called double randoms, or longer lengths (e.g. triple randoms) in order to minimise field welding to join pipes. Section I.4 of Annex I of API 5L states “Unless otherwise agreed, TFL pipe shall be furnished in 12 m (40 ft) random lengths with no jointers.” TFL means ‘through the flowline’. ‘Random’ lengths for 40ft pipe means an average length of any given pipe between 37.5 and 42.5 ft. To be identified as line pipe of a kind used in oil or gas pipelines the pipe must be of a length commonly used in oil or gas transmission pipelines even if it is manufactured to a line pipe Standard such as API 5L. Imported line pipe of shorter lengths than that commonly used for oil or gas pipelines is not of the class or kind so used and is classified as other pipe.

Pipe that is claimed to be short lengths cut off line pipe (off-cuts) in the course of manufacturing is not line pipe of a kind used in oil or gas pipelines. The fact that it is an off-cut is, in itself, evidence that it is not line pipe. It is a part that has been cut off a line pipe. These short lengths of pipe are not similar to, or fit for use as, line pipe used for oil or gas pipelines and must be classified as other pipe.

3.3. Classifying pipe to subheadings 7304.1, 7305.1 and 7306.1

Section 7(1) of the Customs Tariff Act 1995 provides that goods are classifiable under Schedule 3 in accordance with the General Rules for Interpretation set out in Schedule 2 of the Tariff. Interpretative Rule (IR) 1 provides that a classification shall be determined according to the terms of the headings of the Tariff and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the remaining IRs.

Goods must first be described by the terms of the relevant headings.

Based on the information outline in this Guide, the Department’s position is that Classification of steel pipes to the subheadings with the terms ‘line pipe of a kind used for oil or gas pipelines’ is dependent upon the pipes being:

• line pipe; and

• of a kind used in oil or gas pipelines.

In other words, the pipe must be:

• line pipe as understood by the oil or gas pipeline industry; and

• used for high-pressure long-distance petroleum oils or fuel gas, such as natural gas, transmission pipelines OR

• of the same kind as pipe used in transmission pipelines for high-pressure long-distance petroleum oils and fuel gas, such as natural gas.

Therefore, the subheadings cover line pipe that is used in oil or gas pipelines and also line pipe that is of the same kind as that used in oil or gas pipelines, regardless of the intended use by the importer or an end user of the product.

Line pipe that has been manufactured to comply with an appropriate oil or gas pipeline standard, such as AAS 2885, or PI 5L, or multiple standards including an oil and gas pipeline standard, so that is can be used across multiple applications, is classified under these subheadings provided there are no other features (such as some coatings or being galvanised) that make it unsuitable for use in oil or gas pipelines.

Line pipe should not be classified under these subheadings if it is not manufactured to a recognised international standard for line pipe for oil and gas pipelines.

Hollow structural steel (HSS) is not classified under these subheadings unless it is the same in all respects as line pipe that is used for oil or gas pipelines.

An importer cannot classify pipe under these subheadings if they do not have evidence that the product is of a kind used for oil or gas pipelines. In that case, the pipe must be classified as other pipe under the appropriate heading.
“End use” by customers, in the case of importers importing steel pipe for stock purposes, is only relevant if it is imported for a customer to use the pipe in oil and gas pipelines, or if any customers have used the exact same pipe, for oil or gas pipelines. If the importer has documentation to that effect, it is evident that the pipe may be classified as line pipe of a kind used in oil or gas pipelines.

Individual shipments of line pipe must be able to be directly linked to the test certificates presented to the Australian Border Force (ABF) for that shipment. Line pipe that is imported for actual use in a particular oil or gas pipeline should have adequate documentation, such as contractual documents with the pipeline builder, and the standards outlined above, to demonstrate that it is correctly classified to these subheadings. All the necessary facts about the characteristics and features of the goods must be acquired before identifying and classifying goods. Supporting documentation must be available to the Department if a claimed classification is queried.

In the case of line pipe that is imported for end uses other than oil or gas pipelines and the importer claims that the goods are classified to these subheadings, the importer’s claims regarding classification must be supported by appropriate documentation and evidence. The importer must make this documentation and evidence available to the Department on request.
Headings 7304, 7305 and 7306

Heading 7304

7304 TUBES, PIPES AND HOLLOW PROFILES, SEAMLESS, OF IRON (OTHER THAN CAST IRON) OR STEEL:

7304.1 - Line pipe of a kind used for oil or gas pipelines:
    7304.11.00 - - Of stainless steel
    7304.19.00 - - Other

7304.2 - Casing, tubing and drill pipe, of a kind used in drilling for oil or gas:
    7304.22.00 - - Drill pipe of stainless steel
    7304.23.00 - - Other drill pipe
    7304.24.00 - - Other, of stainless steel
    7304.29.00 - - Other

7304.3 - Other, of circular cross-section, of iron or non-alloy steel:
    7304.31.00 - - Cold-drawn or cold-rolled (cold-reduced)
    7304.39.00 - - Other

7304.4 - Other, of circular cross-section, of stainless steel:
    7304.41.00 - - Cold-drawn or cold-rolled (cold-reduced)
    7304.49.00 - - Other

7304.5 - Other, of circular cross-section, of other alloy steel:
    7304.51.00 - - Cold-drawn or cold-rolled (cold-reduced)
    7304.59.00 - - Other

7304.90.00 - Other

Heading 7305

7305 OTHER TUBES AND PIPES (FOR EXAMPLE, WELDED, RIVETED OR SIMILARLY CLOSED), HAVING CIRCULAR CROSS-SECTIONS, THE EXTERNAL DIAMETER OF WHICH EXCEEDS 406.4 MM, OF IRON OR STEEL:

7305.1 - Line pipe of a kind used for oil or gas pipelines
    7305.11.00 - - Longitudinally submerged arc welded
    7305.12.00 - - Other, longitudinally welded
    7305.19.00 - - Other

7305.20.00 - Casing of a kind used in drilling for oil or gas

7305.3 - Other, welded:
    7305.31.00 - - Longitudinally welded
    7305.39.00 - - Other

7305.90.00 - Other
Heading 7306

7306 OTHER TUBES, PIPES AND HOLLOW PROFILES (FOR EXAMPLE, OPEN SEAM OR WELDED, RIVETED OR SIMILARLY CLOSED), OF IRON OR STEEL:

7306.1 - Line pipe of a kind used for oil or gas pipelines
   - 7306.11.00 - Welded, of stainless steel
   - 7306.19.00 - Other

7306.2 - Casing and tubing of a kind used in drilling for oil or gas:
   - 7306.21.00 - Welded, of stainless steel
   - 7306.29.00 - Other

7306.30.00 - Other, welded, of circular cross-section, of iron or non-alloy steel
7306.40.00 - Other, welded, of circular cross-section, of stainless steel
7306.50.00 - Other, welded, of circular cross-section, of other alloy steel
7306.6 - Other, welded, of non-circular cross-section:
   - 7306.61.00 - Of square or rectangular cross-section
   - 7306.69.00 - Of other non-circular cross-section
7306.90.00 - Other