

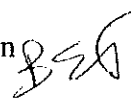


UNITED STATES DEPARTMENT OF COMMERCE  
International Trade Administration  
Washington, D.C. 20230

OCT 17 2003

A-570-502  
Scope Review  
PUBLIC DOCUMENT  
DAS III (7): SMC

MEMORANDUM FOR: Joseph A. Spetrini  
Deputy Assistant Secretary  
for Import Administration, Group III

FROM: Barbara E. Tillman   
Director  
Office of AD/CVD Enforcement VII

SUBJECT: Scope Ruling on the Antidumping Duty Order on Iron  
Construction Castings from the People's Republic of China:  
Request by The Frank J. Martin Company.

### Summary

On August 21, 2002, the Department of Commerce ("the Department") received a request from Frank J. Martin Company (Martin) for a scope ruling on cast iron full-flanged rings and certain cast iron gas lids. In its request, Martin identifies the merchandise in question as being imported from the People's Republic of China ("PRC") and used in the manufacture of The Roadway Valve Box in the United States. Martin argues that the cast iron full-flanged rings and certain cast iron gas lids it imports from the PRC are not covered by the antidumping duty order on iron construction castings from the PRC (Antidumping Duty Order: Iron Construction Castings from the People's Republic of China, 51 FR 17222 (May 9, 1986) ("the Order")). In accordance with 19 C.F.R. § 351.225(k)(1), we recommend that the Department determine that both the cast iron full-flanged rings and cast iron gas lids that are the subject of this scope ruling, are outside the scope of the antidumping duty order on iron construction castings from the PRC.<sup>1</sup>

### Background

Martin filed its request for a scope ruling in proper form on August 21, 2002. The regulations governing the Department's antidumping scope determinations are found at 19 C.F.R. § 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the determinations of the Secretary and the International Trade Commission (the Commission), the initial investigation, and the antidumping duty order. *See* 19 C.F.R. § 351.225(d) (referencing § 351.225(k)(1)). This determination may take place with or without a formal inquiry. If the Department determines

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<sup>1</sup>Unless otherwise indicated, all citations are to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 C.F.R. part 351 (2003).



that these descriptions are dispositive of the matter, the Department will issue a final scope ruling regarding whether the merchandise is covered by the order. See 19 C.F.R. § 351.225(d).

Conversely, where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth at 19 C.F.R. § 351.225(k)(2). These criteria are: i) the physical characteristics of the merchandise; 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. The determination of which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

In the instant case, the Department has evaluated Martin's request in accordance with 19 C.F.R. § 351.225(k)(1), and the Department finds that the descriptions of the product contained in the petition, the final determinations of the Secretary (including prior scope determinations) and the Commission, the initial investigation, and the antidumping duty order are, in fact, dispositive. Therefore, the Department finds it unnecessary to consider the additional factors set forth at 19 C.F.R. § 351.225(k)(2).

Documents and parts thereof from the underlying investigation deemed relevant by the Department to this scope ruling were made part of the record of this determination and are referenced herein. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the administrative record for this scope determination.

In its petition of May 13, 1985, the petitioners, the Municipal Castings Fair Trade Council and its individual members<sup>2</sup>, requested that the investigation cover:

The first group, so-called "heavy construction castings," include manhole covers, rings, and frames, catch basin grates and frames, and cleanout covers and frames, all of which are heavy-walled castings produced by the sand cast method. All these articles are usually manufactured in sets consisting of a cover and frame, and sometimes accessory parts such as increaser or adapter rings. These articles are used for drainage or access purposes in public utility, water, and sanitary systems. Manhole covers and frames constitute the bulk of both domestic production and imports of heavy construction castings.

The second group of articles, the so-called "light construction castings," can be produced by any of three processes, and include valve, service, and meter boxes. These products are also manufactured in sets, usually containing 3 pieces - a base, a straight midsection, and cover. These products are placed below ground to

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<sup>2</sup> The individual members include Bingham & Taylor, Deeter Foundry Inc., East Jordan Iron Works, Inc., LeBaron Foundry, Inc., Municipal Castings, Inc., Neenah Foundry, Company, Tyler Pipe Company, and U.S. Foundry & Manufacturing Co.)

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encase water, gas, or other valves, or water or gas meters. Although they can be manufactured in a range of dimensions, they are usually much lighter and smaller than manhole covers other construction castings, and are more standardized in dimension nationwide.

Petition Seeking Relief Under Section 731 of the Tariff Act of 1930, as Amended, Vol. I at 6, dated May 13, 1985 ("Petition").

On March 19, 1986, the Department of Commerce, International Trade Administration published a notice of final determination of sales at less than fair value of Certain Iron Construction Castings From the People's Republic of China, 51 FR 9483 (March 19, 1986). The products covered by this final determination are:

[c]ertain iron construction castings, limited to manhole covers, rings and frames, catch basins, grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, and valve, service and meter boxes which are placed below ground to encase water, gas or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classified under items numbers 657.0950 and 657.0990 of the *Tariff Schedules of the United States, Annotated*.

On April 25, 1986, in accordance with sections 736 and 751 of the Act, the Commission notified the Department that importations of heavy casting materially injure a United States industry and that importation of light castings threaten material injury to a United States industry.

Iron construction castings are divided into two categories: "heavy" castings, which usually have walls of one (1) inch or greater thickness, and "light" casting, which typically have 1/4-inch -thick walls.

Heavy construction castings consist of manhole covers, rings and frames; catch basin grates and frames; and cleanout covers and frames used for drainage or access purposes. Such castings generally range in weight from 270 to 1,000 pounds and are produced by the sand-cast method. Heavy castings are classified under the Harmonized Tariff Schedule (HTS) item number 732.10.0010.

Light castings consist of valve, service, and meter boxes. These products are placed below ground to encase the valves and meters of water, gas, or other utilities, and to provide access to this equipment for periodic adjustment and reading. Light castings generally range in weight from 10 to 120 pounds and are produced in the United States by the sand-cast, shell mold, or permanent mold process. Light castings are classified under HTS item number 7325.10.0050.

On May 9, 1986, the Department published the Order which covered the following products:

[c]ertain iron construction castings, limited to manhole covers, rings and frames, catch basins, grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under item number 657.0950 of the Tariff Schedules of the United States, Annotated (TSUSA), and to valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters, classifiable as light castings under item number 657.0990 of the TSUSA. These articles must be of cast iron, not alloyed, and not malleable.

On June 7, 1999, the Department, pursuant to sections 751(c) and 752 of the Act, determined that revocation of the antidumping order on certain iron construction castings from Brazil, Canada and the PRC would likely to lead to continuation or reoccurrence of dumping. See Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings from Brazil, Canada, and the People's Republic of China, 64 FR 30310 (June 7, 1999). On October 29, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on certain iron construction castings from Brazil, Canada, and the PRC would likely lead to the continuance or reoccurrence of material injury to an industry in the United States within a foreseeable time. See Iron Metal Castings from India; Heavy Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, 64 FR 58442 (October 29, 1999). Therefore, pursuant to 19 CFR 351.218 (e) (4), the Department published a notice of the continuation of the antidumping duty order on certain iron construction castings from Brazil, Canada, and the PRC. See Continuation of Antidumping Duty Orders: Certain Iron Construction Castings from Brazil, Canada, and the People's Republic of China, 64 FR 61590 (November 12, 1999).

### **Petitioners' Comments**

Petitioners argue that Martin's imported components which undergo assembly in the United States to complete the underground Roadway Valve Box, are covered by the scope of the order. According to petitioners, the Department can address the scope issues in this proceeding without expanding the terms of the order. Petitioners note that the language in the Petition underlying the order describes the subject merchandise in terms of being made in "sets" as well as in complete valve box form:

The second group of articles, the so-called "light construction castings," can be produced by any of three processes, and include valve, service, and meter boxes. These products are also manufactured in sets, usually containing 3 pieces – a base, a straight

midsection, and cover. These products are placed below ground to encase water, gas, or other valves, or water or gas meters. See Petition.

According to petitioners, the manner in which “sets” are described in the Petition as “usually containing three pieces” makes clear that a set could have fewer or more than three pieces. Petitioners contend that Martin’s imported components are designed to be assembled with other parts of a set to make a completed valve box, which squarely fits within the Petition’s description of subject merchandise covered by the investigation. In addition, petitioners note that the Petition contains no language that expressly excludes parts or components of the subject merchandise.

Petitioners argue that the Department has the authority to clarify that individual parts of valve boxes are covered by the same order that applies to whole imported valve boxes. According to 19 CFR 351.225(a), petitioners contend that the Department has the authority to clarify and address scope issues without expanding the order given that “the descriptions of subject merchandise contained in the Department’s determinations must be written in general terms.” Petitioners note that the description provided in the scope of the order indicates that the subject merchandise can be made in “sets” as well as in complete valve box form, thereby giving reason to rule that the imported components in question are within the scope of the order.

Petitioners state that legal precedent shows that the Department has inherent authority to clarify the scope of an order subsequent to its issuance, as inclusive of parts and components. Petitioners cite to NTN Bearing Corp. v. United States, 997 F.2d 1453, 1457 (Fed. Cir. 1993)(“NTN”) and Gold Star Company v. United States, 692 F. Supp. 1382, 1385 (CIT 1988)(“Goldstar”) as providing general guidance in this matter, and argue that the scope of the order need not specify whether components or parts are covered, or whether the order includes language for complete or incomplete valve boxes. According to petitioners, an antidumping order can cover imported components when the components themselves are not sold in the United States, and the imported components have no other purpose other than to be assembled into an end product that would have been within the scope of the order. NTN, 997 F.2d 1453. Petitioners argue that Martin’s imported components have no other purpose other than to be assembled into a valve box which is covered by the scope of the order.

Petitioners further note that the scope of the order on subject merchandise does not limit the scope to products having any specified configuration, but rather to their use: “valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters.” Petitioners contend that the Department has sufficient evidence from the descriptions of the merchandise as contained in the Petition and the antidumping duty order on subject merchandise to make a determination that Martin’s imports are covered by the scope of the order. Therefore, the Department need not find that Martin’s intent in importing its valve box components was to circumvent the order. Even if circumvention was a relevant issue in this instance, petitioners argue that Martin has not provided any information to support its assertion

that substantial value was added during the manufacture and assembly of the valve boxes in the United States.

### **Martin's Comments**

Martin argues that the two components that it imports from the PRC (cast iron full-flanged rings and the cast iron gas lids) which are used to assemble its eight component Roadway Valve Box, do not fall under the scope of the order covering light castings because these two components cannot be considered valve, service, or meter boxes by themselves. In rendering a scope ruling, Martin states that although the Department has inherent authority to define and clarify the scope of an order, it "may not expand those orders in a manner contrary to their original terms." See Duferco Steel, Inc. v. United States, 146 F.2d 913 (CIT 2001). Martin contends that their imported articles are not covered by the language in the underlying Petition because the Petition never sought to include parts or components of valve boxes. Furthermore, Martin states that neither the Petition, the order, nor the subsequent notice of continuation of the order cover light casting components or parts of valve boxes as within the scope of the order.

Martin also cites to Mitsubishi Electric Group v. United States, 898 F.2d 1577 (Fed. Cir.1990) and NTN as other examples of decisions that support its position that the language of the scope must include components or parts of the final product in order to be included within the scope of the order. Specifically, Martin distinguishes the court's decision in NTN from the instant case by noting that the scope of the order under review in NTN, explicitly included "parts thereof," whereas, the language of the order in this proceeding does not include valve boxes and "parts thereof."

Likewise, Martin notes the difference in the scope language of the instant proceeding as compared to that of Gold Star, where the scope was defined as "color television receivers, complete or incomplete." According to Martin, the CIT also found the incomplete receivers to be of the same class or kind of merchandise covered by the antidumping duty order. See Gold Star, 692 F. Supp. 1382, 1385. Furthermore, the CIT stressed that while the scope ruling included incomplete receivers assembled in the United States, it did not include incomplete receivers sold for assembly with American-made components. Id. at 1387. Whereas in the instant proceeding, Martin argues that the imported cast iron full-flanged ring and gas lid do not fall within the scope of the order since the language of the scope does not include parts or components of valve boxes. In addition, Martin states that these two imported components are not considered the same class or kind of merchandise as the valve boxes subject to the scope of the order in question. According to Martin, six additional American-made components are used with these imported ones in order to manufacture the complete valve box in the United States (*i.e.*, these imported parts are being assembled with American-made components).

Martin states that the importation of components of a finished product do not necessarily constitute the importation of a finished product covered by the order if the U.S. assembly of these components added significant value to the product and its importation of components did not

serve exclusively to avoid the application of anti-dumping laws. See Helmac Products Corp. v. Roth (Plastics) Corp., 814 F. Supp. 581 (E.D. Mich. 1993). According to Martin, the valve boxes are assembled in the United States not to circumvent the order, but because the majority of the parts of the valve box (six of the eight components) are themselves manufactured in the United States. Martin claims that these U.S. components are ten times the cost of the two imported foreign components and therefore, the foreign components do not represent a significant portion of the total value and cannot be considered the finished product.

### **Analysis**

The Department has determined that the underlying Petition in regard to light castings is not ambiguous for purposes of determining whether the description of the subject merchandise in question is dispositive. The Petition provides the following description, in relevant part:

The second group of articles, the so-called "light construction castings," can be produced by any of three processes, and include valve, service, and meter boxes. These products are also manufactured in sets, usually containing 3 pieces - a base, a straight midsection, and cover. These products are placed below ground to encase water, gas, or other valves, or water or gas meters.

The Department reasonably interprets from the Petition language that the valve, service and meter boxes subject to the scope of this order can be sold either as one complete box or as a set that comprises all of the individual parts or components necessary to complete a box. Although we agree with petitioners that a set could have fewer or more than three pieces as noted in the Petition, we still find that the Petition would not include a set of individual pieces that could not be assembled into a valve, service or meter box. Furthermore, the language of the antidumping duty order itself makes clear that the subject merchandise intended to be covered is "valve, service and meter boxes which are placed below ground to encase water, gas or other valves, or water or gas meters."

In the instant case, Martin only imported two components of a eight component set that was assembled in the United States to produce Martin's completed Roadway Valve Box. We determine that these two components alone are not sufficient to constitute a box and would therefore, not fall within the scope of the order.

Petitioners have correctly noted that the Department has authority pursuant to 19 CFR 351.225(a) to clarify and address scope issues given the general terms used in the scope of the order to describe the subject merchandise. However, in the instant case, the Department finds that including individual parts within the scope of the order in question, would impermissibly expand the terms of the order.

As noted by petitioners, in Goldstar and NTN, the Department included imported components within the scope of an order, particularly in the case where the imported components have no



other purpose other than to be assembled into subject merchandise. In regard to the scope of the order in question covering light castings, the scope does not contain language that can reasonably be construed to cover parts or components of "valve, service and meter boxes." Furthermore, Martin's two imported components alone (the cast iron full-flanged rings and gas lids), cannot be assembled into a completed valve box as described under the scope of the order. We therefore find these two imported components outside the scope of the order for light castings.

### Summary

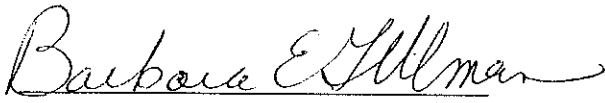
The scope of the order includes valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. We find that the cast iron full-flanged rings and the cast iron gas lids imported by Martin are not within the scope of the order because these two parts alone cannot be considered to constitute a valve box which is the subject merchandise identified and described in the scope of the order. This conclusion is consistent with the scope of the investigation and the order, and the scope as defined in the Petition.

### Recommendation

Based on the preceding analysis, we recommend that the Department find that the cast iron full-flanged rings and cast iron gas lids imported by Martin and subject to this inquiry are outside the scope of the order. If you agree, we will send the attached letter to the interested parties, and will notify the U.S. Customs and Border Protection of our determination.

Agree

Disagree



Joseph A. Spetrini

Deputy Assistant Secretary

for Import Administration, Group III

Date

10/17/03