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International Trade Administration
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FOR OFFICIAL FILE

A-570-502

Scope Request
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MEMORANDUM TO: Stephen J. Claeys
Deputy Assistant Secretary
for AD/CVD Operations

THROUGH: Wendy J. Frankel
Director
for AD/CVD Operations, Office 8

FROM: Hilary E. Sadler, Esq.
Case Analyst
for AD/CVD Operations, Office 8

RE: Antidumping Investigation: Iron Construction Castings from the
People's Republic of China

SUBJECT: Final Scope Ruling for the Unisource Polycast Series 700 Frame,
Number DGO700A, and Grate, Number DGO641

Summary

On November 22, 2005, the Department of Commerce ("the Department") received a scope ruling request from Unisource International, Inc. ("Unisource") concerning whether a certain type of frame and grate imported by Unisource is covered by the antidumping duty order on iron construction castings from the People's Republic of China ("PRC"). See Antidumping Duty Order: Iron Construction Castings from the People's Republic of China (the PRC), 51 FR 17222 (May 9, 1986) ("Order"). Unisource requests that the Department determine whether the 700 Series cast iron components of the "Polycast Presloped System" drainage channels, specifically the Unisource Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641, manufactured in the PRC, are subject to the order. See Unisource's request for scope ruling (November 22, 2005) ("Scope Request"). Petitioner, Municipal Castings Fair Trade Council, did not comment. The Department finds that the Unisource Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641, manufactured in the PRC, do not meet the weight

EXHIBIT



requirement in the heavy castings category and are not defined as valves or service and meter boxes in the light castings category in the scope of this order. Thus, the Department finds that the Unisource Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641, manufactured in the PRC, are outside the scope of this order.

Background

The Department defined the scope of the investigation in its notice of initiation. This scope language has been modified throughout the life of this order and is currently stated as follows:

The products covered by this investigation are certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and drains used for drainage or access purposes for public utilities, 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. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive.

See Order and Certain Iron Construction Castings From The People's Republic of China: Five-year ("Sunset") Review of Antidumping Duty Order: Final Results, 70 FR 24511 (May 10, 2005) ("Sunset Final Results").

Scope Request

Summary of Unisource's Scope Request

Description of the merchandise

Unisource states that the following parts are marketed as the "Polycast Presloped System," cast iron components for a drainage system for fluids, and are identified as follows:

- Grate, Part DGO641: According to Unisource, the grate is cast (gray) iron with an open area of 19.8 square inches per linear foot with dimensions of 5.25 inches by 24 inches and weighs approximately 15 pounds. Unisource states that the grate is intended for use with 600 or 700 series channels, is appropriate for many general use conditions, and must be used with a grating hold down device (part number DAO642B).
- Frame, Part DGO700AA: According to Unisource, the frame is cast (gray) iron at 24 inches in length and 6.25 inches in width and weighs approximately 15 pounds. Unisource states that the frame assembly consists of DGO700AA frames inlaid on top of conventional 600 Series polymer concrete channels and fitted with either cast iron (part

DGO641) or ductile iron (DGO641D) grates. Unisource also states that the frame assembly is intended for use in areas required to withstand traffic from heavy commercial and military aircraft at moderate speeds, hard wheel forklifts, pallet jacks, solid wheel carts, construction equipment, and off-road vehicles.

Unisource's argument

- Unisource states that its Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641, are outside of the order because the scope is limited to "heavy" and "light" construction castings and distinguished by the HTS numbers 7325.10.0010 and 7325.10.0050 in the scope, respectively. Citing to the Sunset Final Results, Unisource comments that heavy castings must weigh between 270 and 1,000 pounds, and light castings generally weigh between 10 and 120 pounds. Unisource differentiates Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641, from light iron castings because they are not "valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters," as stated in the scope.
- Unisource states and submits engineering drawings to demonstrate that the Unisource Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641, are physically identical to the Brazilian frame and grate which were at issue in the Department's April 28, 1995 scope ruling on the antidumping duty order of iron construction castings. See Attached Memorandum, titled "Final Scope Ruling - - Antidumping Duty Order and Countervailing Duty Order on Iron Construction Castings from Brazil - - Request of Southland Marketing, Inc.," for Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, from Holly A. Kuga, Director of Office of Antidumping Compliance ("1995 Scope Ruling") (April 28, 1995). The Department ruled the Brazilian products were outside of the scope of the order in that ruling. Unisource quotes the Department's finding that the 15-pound weight of the Brazilian 700 series frames and grates imported by Southland Marketing Inc. ("Southland") were far below the established weight range of 270 to 1,000 pounds. Unisource further notes that in that case, the Department determined that the light castings category did not include drains, while the Unisource Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641, are drainage channels. Also, Unisource adds that the Department determined that Southland's 700 series components were not valves or service or meter boxes of the kind described in the scope. Thus, Unisource requests that the Department find that the Unisource components and the Southland components are identical and that the Unisource components, like the Southland components, are also outside the scope of the order.
- Unisource avers that the U.S. Customs and Border Protection ("CBP") has acknowledged that the 1995 scope ruling on Brazilian iron construction castings applies to Chinese iron construction castings. On December 29, 1997, Strongwell, a U.S. customer of

Unisource, requested CBP to clarify that the Unisource Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641 (imported from the PRC), also fall outside the scope of antidumping duties similar to the Brazilian subject merchandise. Unisource claims that CBP has permitted it to continue to import Polycast Series 700 frames, Number DGO700A, and grates, Number DGO641, without being subjected to antidumping duties.

Summary of the Petitioners' Comments on Unisource's Scope Ruling Request

Petitioners did not comment on Unisource's scope ruling request.

Legal Framework

The Department examines scope requests in accordance with its scope regulations. See 19 CFR 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission ("ITC"). See 19 CFR 351.225(k)(1). This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(d).

Where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth at 19 CFR 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 as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

For this case, the Department evaluated Unisource's request in accordance with 19 CFR 351.225(k)(1) because it finds that the descriptions of the product contained in the petition, the initial investigation, the determinations by the Secretary (including prior scope determinations) and the ITC are, in fact, dispositive with respect to Unisource's Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

Analysis

In the 1995 Scope Ruling, the Department examined the descriptions of the merchandise in accordance with 19 CFR 351.225(k)(1) and explained that there are two categories of castings covered by this order, namely heavy and light castings:

The final injury determination of the ITC and the final less-than-fair-value

(LTFV) determination of the Department divide iron construction castings into two categories: "heavy" and "light." [footnote omitted] With regard to "heavy" iron construction castings, the final affirmative injury determination of the ITC stated:

"The iron construction castings covered by these investigations are manhole covers, rings, and frames; catch basin grates and frames; cleanout covers and frames; and valve, service and meter boxes. These articles are cast from iron that is not alloyed and not malleable, a material commonly known as gray iron.

"Iron construction castings are divided into two categories - - so called "heavy" castings, which usually have walls of 1 inch or greater thickness . . . The heavy construction castings consist of manhole covers, rings, and frames; catch basin grates and frames; and cleanout covers and frames. These products are used for drainage or access purposes in utility, water and sanitary systems . . . Such castings generally range in weight from 270 to 1,000 pounds and are produced by the sand-cast method." Iron Construction Castings from Brazil, India, and the PRC, USITC Publication 1838 at A-5 (April 1986).

The Department's final LTFV determination and the antidumping duty order similarly describe "heavy" castings as:

certain 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.

Certain Iron Construction Castings From Brazil: Final Determination of Sales at Less Than Fair Value, 51 FR 9478, March 19, 1986; and Antidumping Duty Order: Iron Construction Castings from Brazil, 51 FR 17220 (May 9, 1986). See also Final Affirmative Countervailing Duty Determination, 51 FR 9491, March 19, 1986; and Countervailing Duty Order, 51 FR 17786, May 15, 1986.

The "light" castings portion of the antidumping duty order is defined in the ITC's final injury determination as:

" . . . consist[ing] of valve, service and meter boxes. These products are used to encase the underground valves and meters of water, gas, or other utilities, and to provide access to this equipment from periodic adjustment or reading. Light castings are also manufactured in set, usually containing three pieces - - a base, a top and a cover with lettering and/or a pattern. Light castings generally range in weight from 10 to 20 pounds and are produced by the sand-cast method."

Iron Construction Castings from Brazil, India, and the PRC, USITC Publication 1838 at A-5 (April 1986).

In the final determination of sales at LTFV, and the antidumping duty order, the Department describes "light" castings as:

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 items must be of cast iron, not alloyed, and not malleable.

Certain Iron Construction Castings From Brazil: Final Determination of Sales at Less Than Fair Value, 51 FR 9478, March 19, 1986; and Antidumping Duty Order: Iron Construction Castings from Brazil, 51 FR 17221 (May 9, 1986).

See 1995 Scope Ruling at 3-5.

In April 1995, the Department determined that the 700 Series cast iron components of the "Polycast Presloped System" drainage channels, specifically the Polycast Series 700 Frame, number DGO700, and cast iron grate, number DGO641, were outside the scope of the antidumping duty order on iron construction castings from Brazil because the weight of the components did not fit into the heavy castings category, and the components were not considered drains under the description of the light castings' category. See 1995 Scope Ruling.

The record indicates that the 700 Series components, as described in the 1995 Scope Ruling on iron construction castings from Brazil as imported by Southland, and the 700 Series components imported by Unisource, subject to this scope ruling, have identical characteristics. The Unisource frame, part DGO700A, has the same characteristics as the Southland frame, Number DGO700, both measuring 24 inches in length by 6.25 inches in width with an open area of 19.8 square inches per linear foot. See Scope Request at 3 and 1995 Scope Ruling at 3. Similarly, the Southland frame and the Unisource frame share the same part number, DGO641, measure 5.25 inches wide by 24 inches long, and have an open area of 19.8 square inches. See Scope Request at 3 and 1995 Scope Ruling at 3. Thus, the Department finds that the Unisource Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641, are identical to Southland's products as described in the 1995 Scope Ruling of the Brazilian order.

In its 1995 Scope Ruling, the Department determined that because the Southland 700 Series components each weighed 15 pounds, they were "nowhere near the minimum weight requirement set forth in the definitions of the Secretary and the ITC," and were therefore outside the scope of the order. See 1995 Scope Ruling at 5. The ITC confirmed that heavy iron construction castings generally weigh from 270 to 1,000 pounds whereas light iron construction castings generally weigh under 120 pounds. See Certain Iron Construction Castings From Brazil, Canada, and China, at 5, USITC Pub. 3781, Inv. No. 701-TA-249, 731-TA-262, 263, and 265 (Second Review), (June 2005). As established above, Unisource's Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641, weigh approximately 15 pounds, identical to Southland's iron construction castings, and also do not satisfy the weight requirement as heavy castings covered by this order. Likewise, "light" castings do not include drains of any size or

shape, such as the subject merchandise; rather, this category includes valves and service and meter boxes. Therefore, the Unisource Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641, do not meet the definition of light castings covered by this order. Thus, the Department finds that the Unisource Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641, are not covered by the scope of the order.

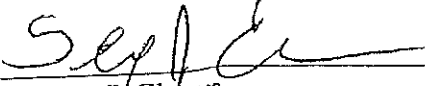
Recommendation

Based upon the above analysis, we recommend that the Department find that Unisource Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641, do not meet the description of merchandise covered by the scope of the order and, therefore, are not subject to the antidumping duty order on iron construction castings from the PRC.

✓

Agree

Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

8/8/06

Date