



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

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Scope Inquiry
Public Document
AD/CVD 5: KLC

MEMORANDUM FOR: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

FROM: Laurie Parkhill *LP*
Office Director
AD/CVD Enforcement 5

SUBJECT: Iron Construction Castings from Brazil, Canada, and the People's
Republic of China - Final Scope Ruling

SUMMARY

On March 7, 2007, the Department of Commerce (the Department) received a request for a scope ruling from Deeter Foundry, Inc., East Jordan Iron Works, Inc., LeBaron Foundry, Inc., Leed Foundry, Inc., Municipal Castings, Inc., Neenah Foundry Company, Tyler Pipe Company, and U.S. Foundry & Manufacturing Co. (collectively the petitioners). On March 23, 2007, after the Department notified the petitioners that they had not appended to their submissions the exhibits to which they referred in their application, the petitioners re-filed their request for a scope ruling. In their application, the petitioners request that the Department determine that the antidumping duty orders on iron construction castings from Brazil, Canada, and the People's Republic of China and the countervailing duty order on iron construction castings from Brazil (collectively the orders) cover both gray and ductile iron construction castings because the scope covers all iron construction castings except alloyed or malleable iron construction castings.

BACKGROUND

On March 5, 1986, the Department described the scope of the antidumping duty order on certain iron construction castings from Canada as follows:

The merchandise covered by this order consists of certain iron construction castings limited to manhole covers, rings and frames, catch basin 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 item number 657.09 of the *Tariff Schedules of the United States (TSUS)*.¹ (Emphasis added.)

On May 9, 1986, the Department described the scope of each of the antidumping duty orders on iron construction castings from Brazil and the People's Republic of China as follows:

The products covered by this order are 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, 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.² (Emphasis added.)

On May 15, 1986, the Department described the scope of the countervailing duty order on certain heavy iron construction castings from Brazil as follows:

The products covered by this order are heavy iron construction castings which are defined for purposes of this proceeding as manhole covers, rings and frames; catch basin grates and frames; and cleanout covers and frames; used for drainage or access purposes for public utility, water and sanitary systems. Manhole covers, rings and frames are currently provided for in item 657.0950 of the *Tariff Schedules of the United States Annotated (TSUSA)*. All other heavy iron construction castings are subsumed in item 657.0990 of the TSUSA.³

On June 8, 2005, the United States International Trade Commission (ITC) determined that revocation of the antidumping duty orders on iron construction castings from Brazil, Canada, and the People's Republic of China and the countervailing duty order on iron construction castings from Brazil would be likely to lead to continuation or recurrence of material injury to an industry

¹ Antidumping Duty Order: Certain Iron Construction Castings From Canada, 51 FR 7600 (March 5, 1986) (Canada AD Order). On August 20, 1998, as a result of a changed-circumstances review, the Department revoked the order with respect to light castings. Iron Construction Castings From Canada: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of the Antidumping Duty Order, 63 FR 49687, 49687 (September 17, 1998) (stating that the Department was "partially revoking the order on iron construction castings from Canada, with regard to light castings").

² Antidumping Duty Order: Iron Construction Castings From Brazil, 51 FR 17220 (May 9, 1986) (Brazil AD Order); Antidumping Duty Order: Iron Construction Castings From the People's Republic of China (the PRC), 51 FR 17222 (May 9, 1986) (PRC AD Order).

³ Countervailing Duty Order: Certain Heavy Iron Construction Castings From Brazil, 51 FR 17786 (May 15, 1986) (Brazil CVD Order).

in the United States within a reasonably foreseeable time.⁴ On June 29, 2005, the Department issued its notice of continuation of the antidumping duty orders on iron construction castings from Brazil, Canada, and the People's Republic of China and the countervailing duty order on iron construction castings from Brazil.⁵

The petitioners assert that, with the exceptions of alloyed or malleable cast iron, the scope of the orders covers materials of all types of cast iron. Citing several industry publications, the petitioners explain that gray iron and ductile iron are two types of cast iron used in the production of iron construction castings and that both are distinct from malleable iron which is a third type of cast iron.⁶ The petitioners also argue that, while the United States Customs Service (Customs)⁷ has ruled that imports of gray and ductile iron construction castings are currently classifiable under the United States Harmonized Tariff Schedule subheadings 7325.10.00 (of nonmalleable cast iron) and 7325.99.10 (other: of cast iron) respectively,⁸ this bifurcation of subheading classifications is based on a non-technical and cursory analysis. Specifically, the petitioners argue, rather than consider the well-established definitions of "ductile" and "malleable" as used in the iron construction casting industry, Customs relied on common dictionary definitions and concluded erroneously that the terms were "nearly identical" and "may be synonymous."

The petitioners state that 19 CFR 351.225(k)(1) directs the Department to consider whether the description of the merchandise contained in the petition, the initial investigation, and prior decisions of the Department and ITC are dispositive. Here, the petitioners assert, while neither the petition language nor previous Department decisions address whether gray and ductile iron products are covered by the scope of the orders,⁹ the ITC's prior determinations are dispositive.

⁴ Certain Iron Construction Castings from Brazil, Canada, and China, 70 FR 34505 (June 14, 2005).

⁵ Continuation of Antidumping Duty Orders on Certain Iron Construction Castings from Brazil, Canada, and the People's Republic of China, and the Countervailing Duty Order on Heavy Iron Construction Castings from Brazil, 70 FR 37326 (June 29, 2005) (Notice of Continuation).

⁶ The petitioners attach portions of American Society for Metals, Metals Handbook (Desk Edition), edited by Howard B. Boyer and Timothy L. Gall (attached as Exhibit 1), Iron Construction Castings Society, Inc., Iron Castings Handbook, edited by Charles F. Watson and Timothy J. Opar (attached as Exhibit 2), and Materials Information Society, ASM Specialty Handbook - Cast Irons, edited by J.R. Davis (attached as Exhibit 3).

⁷ The United States Customs Service is now called United States Customs and Border Protection.

⁸ The petitioners refer to HQ 959521 (December 3, 1996).

⁹ The petitioners argue that, at the time of the original investigation, rather than identify each type of cast iron separately, they defined the scope of the petitions to include all heavy and light construction castings, regardless of the type of cast iron with the only exceptions being alloyed or malleable cast iron. The petitioners also argue that, if they had intended to exclude any particular type of cast iron, they would have done so explicitly. Further, the petitioners argue, because the scope of the merchandise covered by the orders is essentially the same as the petition language, the absence of any express exclusion demonstrates that both gray and ductile cast iron construction castings are within the scope of the orders.

and support a determination by the Department that gray and ductile cast iron castings are within the scope of the orders.

The petitioners assert that, in the final determinations of the original investigations, the Department found sales at less than fair value for all products included in the scope of the investigation from Brazil, Canada, and the People's Republic of China.¹⁰ Additionally, the petitioners state, the ITC made affirmative injury determinations at both the preliminary and final stages of the investigations and that, in the final injury determination, the ITC found two like products consisting of heavy and light iron construction castings within the scope of the investigations.¹¹ Finally, the petitioners argue that, not only did the ITC recognize in the original determination that because iron construction castings are made of both gray and ductile cast iron both are within the scope of the orders, but that during the most recent sunset determination the ITC acknowledged expressly that both are within the scopes of the orders.¹²

PROCEDURE

The regulations regarding scope rulings are provided under 19 CFR 351.225. Subsection 351.225(d) states that, if the Department can determine, based solely upon the application and the descriptions of the merchandise referred to under subsection 351.225(k)(1), whether a product is within the scope of the order, the Department will issue a final ruling as to whether the product is included within the order. Under subsection 351.225(k)(1), the Department is directed to take into account the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC in its consideration of whether a product is included within the scope of an order.

¹⁰ Certain Iron Construction Castings from Canada: Final Determination of Sales at Less Than Fair Value, 51 FR 2412 (January 16, 1986); Certain Iron Construction Castings from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 51 FR 9483 (March 19, 1986), Certain Iron Construction Castings from Brazil: Final Determination of Sales at Less Than Fair Value, 51 FR 9477 (March 19, 1986), and Final Affirmative Countervailing Duty Determination: Certain Heavy Iron Construction Castings from Brazil, 51 FR 9491 (March 19, 1986).

¹¹ Import Investigation: Iron Construction Castings from Canada, 51 FR 7646 (March 5, 1986); Iron Construction Castings from Brazil, India, and the People's Republic of China, 51 FR 16906 (May 7, 1986).

¹² Iron Construction Castings From Brazil, India, and the People's Republic of China, Investigation Nos. 731-TA-262, 264 and 265 (Final), USITC Publication 1838 (April 1986) (Investigation - Brazil, India, and PRC); Iron Construction Castings From Canada, Investigation No. 701-TA-249 and 731-TA-263 (Final), USITC Publication 1811 (February 1986) (Canada Investigation); Certain Iron Construction Castings From Brazil, Canada, and China, Investigation Nos. 701-TA-249 and 731-TA-262, 263 and 265 (Second Review), USITC Publication 3781 (June 2005) (Second Sunset Review).

ANALYSIS

A. Description of the Merchandise Referred to Under 19 CFR 351.225(k)(1)

The descriptions of the merchandise the Department published in the orders are provided in the “Background” section above.¹³ The Department has not issued any previous scope rulings addressing whether gray and ductile cast iron construction castings are within the scope of the orders.

B. Discussion

The Department’s regulations at 19 CFR 351.225(d) provide that, if the Department can determine based solely on the application and the descriptions of the merchandise referred to under subsection 351.225(k)(1) whether a product is within the scope of the order, the Department will issue a final ruling. The United States Court of International Trade has stated that the Department “must consult the final scope language as the primary source in making a scope ruling because 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.” Olympia Industrial, Inc. v. United States, 2006 Ct. Intl. Trade LEXIS 109, Court No. 04-00647 at 11 (C.I.T. July 24, 2006), quoting Tianjin Mach. Imp. & Exp. Corp. v. United States, 394 F. Supp. 2d 1369, 1373-74 (2005). The language of the original antidumping duty orders on iron construction castings from Brazil, Canada, and the People’s Republic of China provides that the “articles must be of cast iron, not alloyed and not malleable.”¹⁴ Because the written description of the merchandise covered by scope of the orders does not state explicitly whether gray and ductile iron are included, pursuant to 19 CFR 351.225(k)(1), we analyzed the petitions, initial investigations, and prior determinations of the Department and ITC to determine whether iron construction castings made from either gray or ductile cast iron are within the scope of the orders. The United States Court of Appeals for the Federal Circuit has recognized that “{s}cope orders are ‘interpreted with the aid of the antidumping petition, the factual findings and legal conclusions adduced from the administrative investigations, and the preliminary order.’” Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1097 (Fed. Cir. 2002), quoting Smith Corona v. United States, 915 F.2d 683, 685 (Fed. Cir. 1990).

Although neither the petitions nor previous determinations by the Department have addressed gray and ductile cast irons directly, the ITC stated that it considered gray and ductile cast iron in its analysis during both the initial investigations and recent sunset reviews of the orders.

¹³ While the scope language of the orders varies in their inclusion of light and heavy iron construction castings, we find that such differences are not relevant to our analysis because such differences do not go to the material from which such items are produced.

¹⁴ See Canada AD Order at 7600; Brazil AD Order at 17220; PRC AD Order at 17222.

Specifically, 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*. (Emphasis added.)

Canada Investigation at 52; Investigation - Brazil, India, and PRC at 63.

The ITC also explained:

High-performance construction castings, such as those used in airport runways, are made of ductile iron, a stronger and more expensive material than gray iron. Industry sources expect that ductile iron construction castings will be used in increasing quantities in less critical applications, primarily for weight reasons. Ductile iron construction castings are lighter than their gray iron counterparts because equivalent performance is attained with less material.

Canada Investigation at 55; Investigation - Brazil, India, and PRC at 66.

Further, during the second sunset review, the USITC stated:

These articles are cast from either gray iron (containing flakes of graphite), which provides excellent machinability, good wear resistance, and high vibration absorption, but has lower elasticity, or are cast from ductile iron (containing high carbon and silicon content), having high modules of elasticity and high strength to permit heavier loads with less deflection. (Emphasis added.)

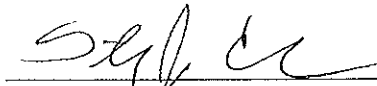
Second Sunset Review at 80.

These statements by the ITC, coupled with the scope-language requirement that the “articles must be of cast iron, not alloyed and not malleable,” demonstrate that the scope of the orders includes articles made of both gray and ductile cast iron. Finally, we find that, because the scope of the orders includes articles made of both gray and ductile cast iron unequivocally, neither Customs Ruling HQ 959521 nor the analysis contained therein is relevant to our analysis.

RECOMMENDATION

We recommend that you determine that the scope of the antidumping duty orders on iron construction castings from Brazil, Canada, and the People's Republic of China and the countervailing duty order on iron construction castings from Brazil include materials made of gray and ductile cast iron. If you agree, we will send the attached letter to all interested parties.

Agree Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

5/3/07

(Date)

Attachment

