



A-570-502

Scope Ruling

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April 16, 2010

MEMORANDUM TO: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

FROM: Erin Begnal *EB*
Program Manager
AD/CVD Operations, Office 8

RE: Certain Iron Construction Castings from the People's Republic of
China: "NDS" Final Scope Ruling

Summary

On December 22, 2009, the Department of Commerce ("Department") received a submission from National Diversified Sales, Inc. ("NDS") requesting a scope ruling¹ on whether certain flappers, grates, and frames are outside the scope of the antidumping order on Iron Construction Castings from the People's Republic of China ("PRC"). *See Notice of Antidumping Duty Order: Iron Construction Castings from the People's Republic of China*, 51 FR 17222 (May 9, 1986) ("Order"). On January 19, and January 20, 2010, Municipal Castings Fair Trade Council ("Petitioner") submitted an opposition to the NDS Ruling Request.² On February 3, 2010, the Department requested that NDS provide: (1) additional information regarding flappers/meter box covers, including product descriptions, photographs and information about meter box assembly; and (2) missing information concerning grates. On February 12, 2010, NDS provided the requested information/documentation.³ On March 3, 2010, Petitioner submitted a response to NDS' February 12, 2010, submission.⁴ On March 15, 2010, NDS submitted an additional

¹ See Scope Ruling Request submitted by National Diversified Sales, Inc., dated December 22, 2009 ("NDS Request").

² See Scope Ruling Request Response submitted by Municipal Castings Fair Trade Council, dated January 19, and January 20, 2010 ("Petitioner's Response"). The January 20, 2010, response provided an attachment that Petitioner had failed to attach to the January 19, 2010 response.

³ See Scope Ruling Request Response submitted by National Diversified Sales, Inc., dated February 9, 2010 ("NDS Response").

⁴ See Scope Ruling Response submitted by Municipal Castings Fair Trade Council, dated March 3, 2010 ("Petitioner's Second Response").



response to Petitioner's March 3, 2010, response.⁵ On March 26, 2010, Petitioner submitted a response to NDS' March 15, 2010, submission.⁶

In accordance with 19 CFR 351.225(d) and (k)(1), we recommend the Department determine that the flapper, grates and frame are not within the scope of the *Order*.

Background

On December 22, 2009, NDS submitted a scope ruling request seeking a determination that its six grates, one frame, and one flapper are outside the scope of the *Order*. See NDS Request. In response to the Department's request, NDS submitted additional information about the products on February 3, 2010. See NDS Response. NDS submitted a further response on March 15, 2010. See NDS' Second Response. In its initial response, NDS states that the flapper is a "component" of certain meter box covers that enables access to the interior of the meter box without removing the cover. See NDS Response at 3. NDS also states that the cast iron grates and frames, which range from approximately 7.83 to 15.50 pounds, do not meet the requirements of either the "light" or "heavy" castings categories. See NDS Request at 2.

The flapper, listed under stock code 113CCIF, is 5" X 8" and is constructed of ductile iron, weighing approximately 1.472 pounds. It is secured on a plastic meter box cover using an iron rod referred to as a lid pin. NDS assembles meter box covers, lids, and complete meter boxes in the United States. NDS states that the flapper and the lid pin are the only products imported for use in its meter box cover. See NDS Response at 3 and 4.

The frame and six grates are made of cast iron and ductile iron. NDS states that they weigh between approximately 7.83 and 15.50 pounds and are classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 7325.99.10. See NDS Request at 7 and 8.

Regarding the flapper, NDS argues that the Department should rule that the flapper is outside the scope of the *Order* as it is an individually imported component of a meter box. NDS contends that the *Order* only applies to "complete" meter and service boxes, not individually imported components. See NDS Request at 2. NDS cites *E. Jordan Iron Works, Inc. v. United States*, 556 F. Supp. 2d 1355 (Ct. Int'l Trade 2008) ("*E. Jordan Iron Works*") as sustaining a Department finding that "cast iron bases and cast iron upper bodies, when imported independently, do not fall within the scope of the order because the order does not contain language to include parts or components of meter boxes." See NDS Response at 4.

Regarding the frame and grates, NDS argues that the Department should determine that the frame and grates are outside the scope of the *Order* as they are too "light" to be classified as "heavy" castings and the products considered to be "light" construction castings do not include grates or frames. See NDS request at 2. NDS cites the scope definitions in the original *Order* and the *2005 Sunset*. See *Certain Iron Construction Castings from the People's Republic of*

⁵ See Scope Ruling Response submitted by National Diversified Sales, Inc., dated March 12, 2010 (NDS' Second Response).

⁶ See Scope Ruling Response submitted by Municipal Castings Fair Trade Council, dated March 26, 2010.

China; Five-year ("Sunset") Review of Antidumping Duty Order; Final Results, 70 FR 24511, May 10, 2005 ("2005 Sunset"). NDS argues that the 2006 Unisource scope ruling indicates that "heavy castings" are defined by weight. NDS cites the Department's finding in the 2006 Unisource Ruling⁷ that the Unisource grate and frame "do not meet the weight 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." See NDS Response at 5-6.

In response, Petitioner argues that NDS' grates, frame, and flapper should not be excluded from the scope of the *Order*. Citing the 2007 Ductile Iron Ruling,⁸ Petitioner contends that the frames and grates should be included in the scope of the *Order* because the scope of the *Order* includes both gray and ductile cast iron. See Petitioner's Response at 3-5. In Petitioner's Second Response, it contends that the 2007 Ductile Iron Ruling resolves the issue of whether the given grates and frames are included in the scope. Petitioner argues that the 2007 Ductile Iron Ruling concluded that ductile, as well as gray iron, castings are included in the scope of the *Order*. Petitioner further argues that the 2007 Ductile Iron Ruling regarding the ductile material issue supersedes the 2006 Unisource Ruling regarding weight requirements. See Petitioner's Second Response at 2, 4. Next, Petitioner argues that the scope language does not impose a particular "weight" requirement to define heavy castings. See Petitioner's Second Response. With respect to the flapper, Petitioner argues that NDS did not provide evidence that the relevant flapper is a component of a meter box in the initial NDS Request. See Petitioner Response.

In response to Petitioner's March 3, 2010, submission, NDS agrees that the *Order* includes castings made of ductile iron. NDS argues that the 2007 Ductile Iron Ruling, however, does not address the issue of exclusion of products based on size or weight, nor does it include any description of size, weight, or features of the castings. NDS concludes that the 2006 Unisource Ruling regarding weight is still applicable. See NDS' Second Response.

The Scope of the *Order* states:

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.

The Scope of the June 29, 2005, *Continuation Order*⁹ states:

⁷ See Final Scope Ruling for the Unisource Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641, August 8, 2006 ("2006 Unisource Ruling").

⁸ See Iron Construction Castings from Brazil, Canada, and the People's Republic of China – Final Scope Ruling, May 3, 2007 ("2007 Ductile Iron Ruling").

⁹ See *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) ("Continuation Order").

The merchandise subject to this antidumping order consists of certain iron construction castings, limited to 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; and valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water and gas meters. These articles must be of cast iron, not alloyed, and not malleable. The merchandise is currently classifiable under item number 7325.10.0010 and 7325.10.0050.

Legal Framework

The Department examines scope requests in accordance with the Department's 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. *See* 19 CFR 351.225(k)(2). 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 inquiry, the Department evaluated NDS' Request in accordance with 19 CFR 351.225(k)(1) and finds that the description of the product(s) contained in the scope of the *Order* and any determinations by the Secretary (including prior scope determinations) and the ITC are, in fact, dispositive with respect to NDS' grates, frame, and flapper. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

Analysis

Flapper:

NDS describes the product as a component of certain meter box covers that enables the interior of the meter box to be accessed without removing the meter box cover.

The Petition described "light construction castings" as including "valve, service, and meter boxes. These products are also manufactured in sets, usually containing 3 pieces – a base, a straight midsection, and cover."¹⁰ In the ITC's Iron Construction Casting ("ICC") Final Injury Determination, the ITC explained that "light castings consist of valve, service, and meter boxes.

¹⁰ *See* Petition at 5.

.. Light castings are also manufactured in sets, usually containing three pieces – a base, a top, and a cover with lettering and/or a pattern.”¹¹

In the 2006 AYM Ruling,¹² the Department stated that “including individual parts or components within the scope of the order when imported independently would impermissibly expand the scope of the order because the order does not contain language to include individual parts or components of valve, service and meter boxes.”¹³

Additionally, the Department found in the 2007 AYM Ruling¹⁴ that the language from the Petition and from the ITC ICC Final Injury Determination described the subject light castings as being manufactured in sets, usually containing three pieces – a base, a straight midsection, and a cover.

In 2008, the Court of International Trade (“CIT”) sustained the Department’s 2006 AYM Ruling, in which the Department determined that AYM’s imported cast iron bodies and bases for manufacturing its meter boxes are outside of the scope of the *Order*.¹⁵ The CIT ruled in *E. Jordan Iron Works* that “{a}ll evidence indicates that the focus of Commerce’s investigations was on completed meter boxes and box sets rather than individual parts or components.”¹⁶ The CIT also pointed out that the initial Petition language “indicates that while a meter box set does need not to be preassembled, the set must consist of all of the parts required to form a completed meter box to be within the order’s scope.”¹⁷

Additional evidence also supports the Department’s conclusion that NDS’ imports of ductile iron flappers for meter boxes are not covered by the scope of the *Order*. Pursuant to 19 CFR 351.225(k)(1), we have considered prior scope determinations where the Department also found that the scope of the *Order* did not include parts or components of valve, service or meter boxes. Specifically, the Department previously stated: “{w}ith respect to the light castings the order only covers valve, service and meter boxes not the individual components of such boxes.”¹⁸

¹¹ See *Iron Construction Castings From Brazil, India, and the People’s Republic of China: Determination of the Commission in Investigations Nos. 701-TA-249 and 731-TA-262, 264, and 265 (Final) Under the Tariff Act of 1930*, USITC Publication 1838 (April 1986) at A-5 (“ITC ICC Final Injury Determination”).

¹² See Final Scope Ruling on the Antidumping Duty Order on Iron Construction Castings from the People’s Republic of China: Request by A.Y. McDonald Mfg. Co. (cast iron lids and bases), 2006 (“2006 AYM Ruling”).

¹³ *Id.*

¹⁴ See Final Scope Ruling on the Antidumping Duty Order on Iron Construction Castings from the People’s Republic of China: Request by A.Y. McDonald Mfg. Co. (cast iron lids and bases), 2007 (“2007 AYM Ruling”).

¹⁵ See *E. Jordan Iron Works at 1358*.

¹⁶ *Id.*, at 4-8.

¹⁷ *Id.*

¹⁸ See Memorandum from Edward Yang to John Durant entitled “Scope Inquiry on Certain Iron Construction Castings from Brazil, Canada, the People’s Republic of China, and India,” dated June 15, 1992, at 1. The memo stated that the rings at issue “are further assembled with a cover and skirt to make a containment box” for use with underground gasoline storage tanks. The Department also stated that, “{a}lthough the CNI rings are light weight, the scope of the light castings covers completed sets not the individual components.” See *id.* at 1.

In the Martin Scope Ruling,¹⁹ the Department stated that under its interpretation of the Petition language, the valve, service or meter boxes subject to the scope of the *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.”²⁰ The Department also explained that “the petition would not include a set of individual pieces that could not be assembled into a valve, service or meter box.”²¹

Consistent with the 2006 AYM Ruling, the 2007 AYM Ruling, *E. Jordan Iron Works*, and the 1992 Martin Scope Ruling, we find that NDS’ imported ductile iron flappers constitute components of meter boxes that do not comprise a complete meter box. Therefore, they do not match the description of the products covered by the *Order*. Thus, we determine that the ductile iron flapper for meter boxes does not fall within the scope of the *Order* because the scope of the *Order* does not include parts or components.

Grates and Frame:

In the 1995 Southland Ruling,²² 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 casting:

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*

¹⁹ See Scope Ruling on the Antidumping Duty Order on Construction Castings from the People’s Republic of China: Request by Frank J. Martin Company (Oct. 17, 2003) (“Martin Scope Ruling”).

²⁰ See *Id.* at 7, where the Department determined that the Martin Company’s imports of two components used to assemble its eight-component Roadway Valve Box did not fall within the scope of the order because two components cannot be considered a valve, service or meter box by themselves.

²¹ *Id.*

²² See Final Scope Ruling – Antidumping Duty Order and Countervailing Duty Order on Iron Construction Castings from Brazil – Request of Southland Marketing, Inc., April 28, 1995 at 3-5 (“1995 Southland Ruling”).

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 Southland Ruling.

In the 1995 Southland 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*.²³ The ITC confirmed that heavy iron construction castings generally weigh from 270 to 1,000 pounds whereas light iron construction castings generally weigh less than 120 pounds.²⁴ Furthermore, in the 1995 Southland Ruling, 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.²⁵

Moreover, the Department addressed the issue of whether similar grates and frames were within the scope of the *Order* in the 2006 Unisource Ruling. On August 8, 2006, the Department determined that Unisource’s frames and grates were outside the scope of the *Order* because they did not meet the weight requirements for “heavy” castings and were not included in the listing of products characterized as “light” castings. The scope ruling stated that Unisource frames and grates, “do not satisfy the weight requirements as heavy castings covered by this order. Likewise, ‘light’ castings do not include drains of any size or shape.”²⁶

We find that the NDS’ grates and frame are similar to the grates and frames in the Unisource Ruling and the Southland Ruling. The NDS grates and frame range in weight from approximately 7.83 pounds to approximately 15.5 pounds, similar to the weight of the Southland and Unisource grates and frames, which weighed approximately 15 pounds. The NDS grates and frame do not satisfy the weight requirement as heavy castings covered by the *Order*. As the Department determined in the 2006 Unisource Ruling, “light” castings do not include drains of any size or shape; rather it includes valves, service, and meter boxes. Therefore the NDS grates and frame addressed in this ruling do not fall under the category of light castings covered by the *Order*.

While Petitioner contends that ductile iron products are covered by the scope of the *Order*, pursuant to the 2007 Ductile Iron Ruling, where the Department found that ductile iron castings that meet the other physical requirements are included within the scope of the *Order*, we find that in this case the ductile iron grates and frame do not meet the other physical characteristics of the products included within the scope (*i.e.* weight). Accordingly, we find that they do not constitute light castings covered by this *Order*.

²³ See *id.* at 5.

²⁴ 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).

²⁵ See Final Scope Ruling – Antidumping Duty Order and Countervailing Duty Order on Iron Construction Castings from Brazil – Request of Southland Marketing, Inc., April 28, 1995.

²⁶ See Final Scope Ruling for the Unisource Polycast Series 700 Frame, Number DGO700A, and Grate, Number DGO641, August 8, 2006 (“Unisource Ruling”).

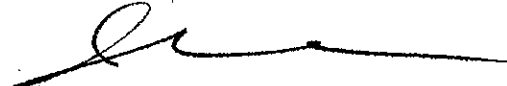
Recommendation

Based upon the foregoing analysis, the Department finds that, pursuant to 19 CRF 351.225(k)(1), NDS' six grates, frame, and flapper are not within the scope of the *Order* covering Iron Construction Castings from the PRC. The Department finds that the flapper is outside of the scope of the *Order* because it is a component of a meter box, not a complete meter box. The Department finds that the six grates and one frame are outside the scope of the *Order* because they do not meet the minimum weight requirement of "heavy" castings and are not included in the products characterized as "light" castings.



Agree

Disagree



John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

4/16/10

Date