



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

A-570-875

Scope Review
Public Document
AD/NME/O4: SMH

September 19, 2008

FOR PUBLIC FILE

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

FROM: Abdelali Elouaradia
Office Director
Import Administration, Office 4

REGARDING: Antidumping Duty Order on Non-Malleable Cast Iron Pipe Fittings
from the People's Republic of China

SUBJECT: Final Scope Ruling on the Black Cast Iron Flange, Green Ductile
Flange, and the Twin Tee

Summary

On September 10, 2007, Taco Inc. ("Taco"), a U.S. manufacturer of hydronic systems and components used primarily in the heating, ventilation, and air conditioning ("HVAC") industry, requested¹ that the Department of Commerce (the "Department") determine whether two flanges and a "Twin Tee" pipe fitting ("Twin Tee") to be imported by Taco are subject to the antidumping duty order on non-malleable cast iron pipe fittings from the People's Republic of China ("PRC"). See Notice of Antidumping Duty Order: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China, 68 FR 16765 (April 7, 2003) ("NM Pipe Fittings Order"). Petitioners² did not submit comments on this scope request.

Pursuant to 19 CFR 351.225(d), we recommend that the Department determine that a formal scope inquiry is not warranted in this case. Further, pursuant to 19 CFR 351.225(k)(1), we recommend that the Department determine that the merchandise in question is within the scope of the antidumping duty order on non-malleable cast iron pipe fittings.

¹ See Letter from Taco to the Secretary of Commerce, "Scope Ruling – Antidumping Duty Order Concerning Finished and Unfinished Non-Malleable Cast Iron Pipe Fittings from China," dated September 10, 2007 ("Scope Ruling Request").

² Petitioners are Anvil International, Inc. and Ward Manufacturing, Inc.



Applicable Regulations

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 351.225. On matters concerning the scope of an antidumping order, our initial basis for determining whether a product is included within the scope of an order are the descriptions of the product contained in the petition, the initial investigation, and the prior determinations of the Secretary (such as prior scope rulings) and the International Trade Commission ("ITC"). See 19 CFR 351.225(d) and 351.225 (k)(1). Such scope determinations may take place with or without a formal scope inquiry. See 19 CFR 351.225(d).

Conversely, where 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 are not dispositive, the Department will consider the additional factors set forth at 19 CFR 351.225(k)(2). These criteria are as follows: (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. These factors are known commonly as the Diversified Products criteria.³ 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 record evidence before the Department.

Product Descriptions

1. Scope of the Order

The Department identified the scope of the investigation in its notice of initiation, and this scope language carried forward without change through the preliminary and final determinations of sales at less than fair value.⁴ In addition, there have been no subsequent changes to the scope. The scope description as published in the NM Pipe Fittings Order is as follows:

The products subject to this order are finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from 1/4 inch to 6 inches, whether threaded or un-threaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as "cast iron pipe fittings" or "gray iron pipe fittings." These cast iron pipe fittings are normally produced to ASTM A-126 and ASME B.16.4 specifications and are

³ See Diversified Products Corp. v. United States, 6 CIT 155, 572 F. Supp. 883 (1983).

⁴ See Initiation of Antidumping Duty Investigation: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China, 67 FR 12966 (March 20, 2002); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China, 67 FR 60214 (September 25, 2002); and Notice of Final Determination of Sales at Less than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China, 68 FR 7765 (February 18, 2003).

threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (“UL”) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.

Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A-395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope of the order. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (“MJ”), or push on ends (“PO”), or flanged ends and produced to the American Water Works Association (“AWWA”) specifications AWWA C110 or AWWA C153 are not included.

Imports of subject merchandise are currently classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers 7307.11.00.30, 7307.11.00.60, 7307.19.30.60 and 7307.19.30.85. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

See NM Pipe Fittings Order at 16765.

2. The Petition

Petitioners used the same language as the antidumping duty order to describe the covered merchandise⁵ and noted that most subject fittings are used in fire protection systems and in steam heat conveyance systems. See “Petition for Imposition of Antidumping Duties: Non-Malleable Cast Iron Pipe Fittings from the People’s Republic of China,” (February 21, 2002) (“Petition”) at 4. The Petition states that the fire protection/sprinkler market accounts for 90 percent of shipments, the steam heating market represents another five percent of shipments, and other uses constitute less than five percent of shipments. *Id.* The Petition also states that the scope “includes, but is not limited to, all pipe fittings produced to any one of the listed non-malleable cast iron pipe fittings specifications...and fittings made to proprietary non-malleable cast iron pipe fittings specifications.” *Id.* at 6. Lastly, according to Petitioners, “all of the subject merchandise constitutes a single class or kind of merchandise and a single like product.” *Id.*

⁵ The Petition originally included language in the scope that referenced the end-use applications of subject merchandise. In response to a request from the Department, Petitioners removed the end-use language from the scope in a supplemental to the Petition. See “Amendment to the Petition for Imposition of Antidumping Duties: Non-Malleable Cast Iron Pipe Fittings from the People’s Republic of China,” (March 5, 2002) (“Amendment to the Petition”) at 5 and Exhibit 5.

3. The ITC's Description

The ITC, in its final injury analysis, described the domestic like product in the following manner:

{T}he subject imports include non-malleable cast iron pipe fittings as well as certain ductile cast iron pipe fittings, such as those that can be used in traditionally non-malleable pipe fitting applications. Pipe fittings generally are used to connect the bores of two or more pipes or tubes, connect a pipe to another apparatus, change the direction of fluid flow, or close a pipe. Cast iron, the material from which the subject fittings are made, is a general term for alloys which are primarily composed of iron, carbon (more than two percent), and silicon.

Non-malleable iron (also referred to as gray iron) is defined by the ASTM as cast iron in which fine graphite flakes are formed during cooling. Non-malleable irons have tensile strengths ranging from 20,000 to 58,000 psi. Pipe fittings produced from non-malleable cast iron are used primarily in fire protection/sprinkler systems, accounting for approximately 90 to 95 percent of shipments, but also are used in the steam conveyance heating systems in older buildings and other applications. Non-malleable cast iron pipe fittings primarily are produced to ASTM A-126 and ASME B16.4 specifications.

Ductile iron fittings are cast from iron to which a very small amount of magnesium has been added in the liquid state to induce the formation of graphites as spheroids or nodules. The tensile strength of ductile iron exceeds that of non-malleable cast iron and ranges from 60,000 to 100,000 psi. Ductile fittings corresponding to the dimensions of the subject merchandise generally are used in fire protection sprinkler applications.

See Non-Malleable Cast Iron Pipe Fittings from China, Investigation No. 731-TA-990 (Final), Pub. No. 3586 (March 2003) ("ITC Final Determination") at pages 4-5.

Regarding flanged fittings, the ITC stated:

Flanged fittings are different from threaded fittings in that the flanged fittings are cast with an integral rim, or flange, at the end of the fitting. The flanged connection is made by inserting a gasket in between the flanged ends of two separate pieces and securing the ends with several bolts.

See Id. at page I-9.

Summary of Argument

Taco requested that the Department issue a scope ruling finding that two specialty flanges and the Twin Tee are not subject to the NM Pipe Fittings Order. The first item is a black cast iron flange (“black flange”). The second item is a green ductile iron flange (“green ductile flange”). Taco claims that both specialty flanges will be imported in the following sizes: ¾”, 1”, 1 ¼”, and 1 ½”. The third item is the large cast iron Twin Tee.

1. Black Flange and Green Ductile Flange

Taco argues that its black flange and green ductile flange are specialty flanges that are different from the general purpose pipe fittings subject to this order, such as elbows, tees, crosses, reducers, caps, or couplings. Since the physical characteristics of piping fittings are not further defined in the scope, Taco reviewed the language used by the ITC to describe pipe fittings in the ITC Final Determination. Taco observes that the ITC stated that “Pipe fittings generally are used to connect the bores of two or more pipes or tubes, connect a pipe to another apparatus, change the direction of fluid flow, or close a pipe.” See Scope Ruling Request at 8. Taco asserts that its flanges do not meet this definition of non-malleable cast iron pipe fittings because its flanges “are not used to connect the bores of two or more pipes or tubes, nor are they used to connect a pipe to an apparatus, nor do they change the direction of water flow or close off a pipe.” Id. at 9. Rather, its flanges are used to connect a Taco manufactured circulator pump to a threaded pipe or to a threaded fitting. Although the scope of the order does include the term “flanged fittings,” Taco argues that its products are specialty flanges that cannot be considered “flange fittings” because flanged pipe fittings typically, as illustrated by information from the American Cast Iron Pipe Company attached to the Scope Ruling Request, have two or more openings which allow them to be connected to a pipe as a pipe fitting. See Scope Ruling Request at 9-10 and Attachment B. In contrast, Taco’s flanges have only one opening for connecting a pipe, function to connect a pipe or pipe fitting to the circulator pump, and do not function as part of the pipe itself as would a “flanged pipe fitting.”

Taco observes that the ITC states that subject pipe fittings are used “primarily in fire protection/sprinkler systems but are also used in the steam conveyance systems installed in older buildings in inner cities.” See Scope Ruling Request at 12. According to Taco, its flanges are not intended for use in fire protection/sprinkler systems or steam conveyance systems.

Taco also notes that subject pipe fittings are defined in the scope as being produced to meet ASTM A-126 (“Grey Iron for Valves, Flanges, and Pipe Fittings”) or ASTM A-395 (“Ferritic Ductile Iron Pressure-Retaining Castings for Use at Elevated Temperature”) specifications. According to Taco, the fact that the titles of these specifications include both “pipe fittings” and “flanges” is indicative of the fact that flanges are not considered pipe fittings. Moreover, although made of the same material as those products subject to these specifications, Taco’s flanges are not designed to meet the pressure-temperature rates, size, tolerances, and method of designating openings, markings, or dimensions of the fittings defined by these ASTM standards. Moreover, continues Taco, its flanges are not certified by the UL, unlike subject

fittings. Regarding the ASME standards for pipe fittings identified in the scope, Taco notes that ASME B.16.3 and B.16.4 are for “Malleable Iron Screwed Fittings” and “Grey iron Threaded Fittings”, respectively. Noticeably absent from the scope is ASME B.16.5, which is for “Pipe Flanges and Flanged Fittings.” Taco argues that, by omitting ASME B.16.5, Petitioners did not intend to cover flanges.

Lastly, Taco believes there are no other U.S. manufacturers of comparable flanges, and therefore, contends that Petitioners did not intend to include these types of flanges in the scope of the order.

2. Twin Tee Fitting

Taco states that its Twin Tee product is “a single pipe fitting designed to replace the two primary circuit tees used to connect a secondary piping circuit to a primary piping circuit in a hydronic system.” See Scope Ruling Request at 10. Taco argues that the Twin Tee is not included in the scope of the order even though the order includes “tees” because, unlike subject pipe fittings, the Twin Tee (1) does not meet ASTM and American National Standards Institute (“ANSI”) standards for general purpose pipe fittings; (2) is not UL certified; (3) is a particular type of fitting for use in a unique Taco-patented and manufactured product, the Taco LoadMatch hydronic system; (4) there is no known domestic like product with which to compare; and (5) is not used in either fire protection/sprinkler systems or steam conveyance systems. *Id.* at 11-12.

Lastly, Taco asserts that the Twin Tee is not marketed for general use pipe fitting applications. Taco states that the Twin Tee is not used in fire protection/sprinkler systems unlike those mentioned in the ITC’s final determination. See ITC Determination at 5. Rather, the Twin Tee is specifically designed for use in the Taco LoadMatch hydronic system.

Arguments Provided Under 19 CFR 351.225(k)(2)

Taco also provided arguments under the criteria provided by 19 CFR 351.225(k)(2). Since the Department does not find it necessary to examine these criteria in making a final determination, and is instead making its determination pursuant to 19 CFR 351.225(k)(1), we have not summarized or addressed those arguments in this ruling. In considering whether Taco’s products are included within the scope of the NM Pipe Fittings Order, the Department determined that the descriptions of the subject merchandise contained in the petition, the investigation, and the determinations of the Secretary (such as prior scope rulings) and the ITC are dispositive.

Analysis

As noted above, when determining whether a specific product is within the scope of an antidumping duty order, the Department reviews the descriptions of the subject merchandise contained in the petition, the investigation, and the determinations of the Secretary (such as prior scope rulings) and the ITC. See 19 CFR 351.225(d) and 351.225(k)(1). In discussing the

interpretive process the Department should follow in making scope rulings pursuant to 19 CFR 351.225(k)(1), the Court of Appeals for the Federal Circuit (“CAFC”) stated:

The critical question is not whether the petition covered the merchandise or whether it was at some point within the scope of the investigation. The purpose of the petition is to propose an investigation ... A purpose of the investigation is to determine what merchandise should be included in the final order. 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. Thus, the question is whether the {final scope of the order} included the subject merchandise.

See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1096 (Fed. Cir. 2002) (“Duferco”). The CAFC also noted that, “a predicate for the interpretative process {in a scope inquiry} is language in the order that is subject to interpretation.” Id. at 1094. Through these statements, the CAFC found that the appropriate place to begin the analysis as to whether a product is included within the scope of an antidumping duty order is to review the scope language of the antidumping duty order itself. Furthermore, the CAFC stated that, “{s}cope orders may be interpreted as including subject merchandise only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it.” (Emphasis added.) Id. at 1089.

In accordance with 19 CFR 351.225(k)(1) and Duferco, the Department first examined the language of the scope of the NM Pipe Fittings Order, including any exclusions, to determine whether Taco’s products are within the scope of the order. The Department also conducted this analysis with reference to the ITC’s description of the scope. Finally, the Department addressed Taco’s arguments pertaining to each of the three products.

1. *Black and Green Ductile Flanges*

In analyzing whether Taco’s flanges are within the scope of the order, the Department first reviewed the scope language contained in the NM Pipe Fittings Order. We note that the scope of the order states, “{t}he products covered by this order are finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from ¼ inch to 6 inches, whether threaded or unthreaded, regardless of industry or propriety specifications.” In addition, the scope says “{f}ittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above...are also included in the scope of the order.” Taco states that its flanges are made of cast and ductile iron and have an inside diameter of greater than ¼ inch and less than 6 inches. See Scope Ruling Request at 2 and Attachment A. Moreover, Taco provides no argument that its products should be considered outside the scope based upon material or diameter. Thus, Taco’s flanges satisfy the material and diameter restrictions established by the scope.

The scope of the order has three exclusions for cast iron pipe fittings and five exclusions for ductile iron pipe fittings. Regarding cast iron, the order states that “the scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.” Taco has made no claim, nor provided any evidence, that its black flange (i.e., the cast iron flange) is covered by any of these exclusions. Thus, these exclusions do not apply. Concerning ductile iron, after establishing that ductile pipe fittings are subject to the order, the scope states that “these fittings do not include grooved fittings or grooved couplings.” The scope also states that “ductile cast iron fittings with mechanical joint ends (“MJ”), or push on ends (“PO”), or flanged ends and produced to the American Water Works Association (“AWWA”) specifications AWWA C110 or AWWA C153 are not included.” Taco has made no claim, nor provided any evidence, that its green flanges (i.e., its ductile iron flanges) are grooved fittings or grooved couplings. Thus, these exclusions do not apply. Similarly, Taco has made no claim, nor provided any evidence, that its green ductile flanges have MJ ends or PO ends, and are produced to either of the AWWA specifications. Thus, Taco’s green ductile flanges are not excluded via these two exceptions. Regarding the last exclusion, for ductile iron pipe fittings with flanged ends that are produced to either of the two listed AWWA specifications, we note that Taco’s green ductile flange has a flanged end. However, Taco has made no claim, nor provided any evidence, that its green ductile flanges are produced to AWWA C110 or AWWA C153 specifications. In fact, at various points in its Scope Ruling Request, Taco emphasizes that its green ductile flanges do not satisfy any of the specifications listed in the exclusions to the scope. Thus, Taco’s green ductile flanges are not excluded via the last exception.

Having established that Taco’s black flanges and green ductile flanges satisfy the material and diameter requirements of the scope, but do not satisfy any of the exclusions provided in the scope, the Department then analyzed the main question raised by Taco - whether its products should be considered pipe fittings within the meaning of the scope of the order. First, we note that the scope of the order does not provide a definition of the term “pipe fittings.” However, as noted by Taco, the ITC does define the term “pipe fitting” in its final injury determination. Specifically, the ITC stated that “pipe fittings generally are used to connect the bores of two or more pipes or tubes, connect a pipe to another apparatus, change the direction of fluid flow, or close a pipe.” See Scope Ruling Request, at 8, citing the ITC Final Determination at 4. With regard to Taco’s claim that the black flange and green ductile flange do not meet the ITC’s definition of pipe fittings because its flanges are not used to connect the bores of two or more pipes or tubes, nor are they used to connect a pipe to an apparatus, nor do they change the direction of water flow or close off a pipe, we disagree. In reviewing the product documentation submitted by Taco, the Department finds that Taco’s flanges conform to the ITC’s definition of pipe fittings. Taco states that the products in question are “used to connect a Taco manufactured circulator pump to a threaded pipe or to threaded fittings.” See Scope Ruling Request at 9. The Department notes that a circulator pump satisfies the dictionary definition of an apparatus.⁶ Therefore, according to Taco, the black and green

⁶ An apparatus is (1) a set of materials or equipment designed for a particular use; (2) a group of anatomical or cytological parts functioning together; or (3) an instrument or appliance designed for a specific operation. See Merriam-Webster Online Dictionary, Apparatus, available at <http://www.merriam-webster.com/dictionary/apparatus> (last visited August 22, 2008).

ductile products in question are used to connect a pipe to an apparatus, and thus, conform to the ITC's definition of subject pipe fittings. See ITC Determination at 4-5. In this regard, the Department rejects Taco's argument that its products are not considered pipe fittings.

The ITC, in its final injury determination, discusses flanged fittings and states that “flanged fittings are different from threaded fittings in that the flanged fittings are cast with an integral rim, or flange, at the end of the fitting. The flanged connection is made by inserting a gasket in between the flanged ends of two separate pieces and securing the ends with several bolts.” See ITC Final Determination at I-9. The first sentence of this description clearly applies to Taco's products because they are fittings that are cast with an integral rim, or flange, at the end of the fitting. The second sentence, where the ITC describes how two flanged fittings are used to connect two pipes, does not apply to Taco's products since those products are used to attach a pipe to an apparatus. However, it is clear that the general emphasis of the ITC's description of a flanged fitting connection does apply to Taco's products since they connect to the apparatus by securing the flanged end with bolts.⁷ Furthermore, because the scope of the NM Pipe Fittings Order neither specifies nor limits the number of openings on a subject fitting, Taco's argument that its products contain an insufficient number of openings and therefore cannot be called flanged fittings is incorrect. Thus, the Department determines that, as fittings cast with an integral rim, or flange, at the end of the fitting, Taco's black and green ductile flanges can properly be classified as flanged fittings, as defined by the ITC. See Id. at I-9. Because flanged fittings are covered by the scope of the NM Pipe Fittings Order and the black and green ductile flanges can properly be classified as flanged fittings, the black and green ductile flanges fall within the scope of the NM Pipe Fittings Order.

With regard to Taco's position that the flanged fittings should be excluded from the order because Petitioners in this case do not produce the same type of pipe fittings, we disagree. First, there is no statutory requirement that Petitioners produce all products covered by the scope of the order. See Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR 42985 (July 12, 2000) (“Circular Seamless Determination”) and accompanying Issues and Decision Memorandum at Comment 1. In other words, Petitioners are not required to produce every model of the foreign-like product. Therefore, whether Petitioners produce a model identical to the products Taco produces is not relevant to the Department's scope ruling. See Memorandum for Jeffrey May, Deputy Assistant Secretary, from Laurie Parkhill, Office Director, “Final Scope Ruling – Antidumping Duty Order on Non-Malleable Pipe Fittings from the People's Republic of China,” (November 5, 2004) (“Final Scope Ruling”) at 3-4.

Concerning Taco's assertions that the flanged fittings are not included in the scope of the order because they are not general purpose fittings used in fire protection/sprinkler systems, but rather are specially designed flanges used to attach a pipe to a Taco circulator pump, we disagree. The Petition and the ITC's rulings state that, while the fire protection/sprinkler system market is the dominant use for the subject fittings in the United States (accounting for

⁷ In its Scope Ruling Request, Taco is silent as to whether a gasket is used in connecting its flanges to the circulator pipes.

approximately 90 percent of shipments), pipe fittings that are used in steam conveyance systems account for approximately five percent while other industries constitute the remaining five percent of shipments. See Petition at 4; and ITC Final Determination at I-6. Taco states that its products are used to connect pipes to “water circulators” for use in “hydronic” systems. See Scope Ruling Request at 10 and Attachment A. The dictionary definition of the term “hydronic” is “of, relating to, or being a system of heating or cooling that involves transfer of heat by a circulating fluid (as water or vapor) in a closed system of pipes.”⁸ Given this definition, it appears that Taco’s products may, in fact, be used in an application that is the same, or very similar to, an application identified in the Petition (i.e., water conveyance). Further, the scope of the order states that the products covered include all non-malleable cast iron pipe fittings “regardless of industry or proprietary specifications.” Thus, even if Taco’s flanges do not fall within an identified application but instead are part of the unidentified five percent of applications, the Department finds that the scope of the order was written specifically to include pipe fittings from all industries. Most importantly, even though the Petition and the ITC’s final injury determination discuss the industries that use subject merchandise, the scope of the order is defined by physical characteristics, rather than end use. See Amendment to the Petition at 4 and Exhibit 5.

As discussed above, the Department has determined above that Taco’s flanged fittings meet the definition of pipe fittings. Thus, the Department rejects Taco’s arguments that ASTM/ASME titles applicable to pipe fittings are inapplicable to Taco’s flanged fittings. Regarding Taco’s claims that because the flanged fittings do not meet ASTM and ANSI standards and are not UL certified, they are not included in the scope of the order, we disagree. The scope of the order states that the products covered include all non-malleable cast iron pipe fittings “regardless of industry or proprietary specifications.” The scope continues, stating, “These cast iron pipe fittings are normally produced to ASTM A-126 and ASME B.16.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories certified.” (Emphasis added.) First, by use of the terms “regardless,” “normally,” and “most,” it is clear that subject merchandise is not limited to exclusively pipe fittings produced to ASTM A-126, ASME B.16.4, and ASME B1.20.1 specifications, nor is it limited exclusively to pipe fittings certified by the UL. Petitioners, by qualifying the specifications with the words “regardless,” “normally,” and “most,” did not intend for the standards included in the investigation to be considered an exhaustive list of the standards applicable to the merchandise covered by the scope of the NM Pipe Fittings Order. Second, the Petition states that the scope covers all non-malleable cast iron pipe-fittings meeting the physical descriptions set forth in the Petition, “regardless of specification.” See Petition at 6. The Petition subsequently states that the scope “includes, but is not limited to, all pipe fittings produced to any one of the listed non-malleable cast iron pipe fittings specifications...and fittings made to proprietary non-malleable cast iron pipe fittings specifications.” (Emphasis added). See Id. Third, as noted above, the scope of the order states that the products covered include all non-malleable cast iron pipe fittings regardless of industry or proprietary specifications. Therefore, pipe fittings included in the scope do not have to meet

⁸ See Merriam-Webster Online Dictionary, Hydronic, available at <http://www.merriam-webster.com/dictionary/hydronic> (last visited August 22, 2008).

the specifications of ASTM A-126 and ASME B.16.4. This is clearly demonstrated by the fact that the scope language expressly includes both threaded and unthreaded fittings, while the scope notes that ASTM A-126 and ASME B.16.4 are threaded to ASME B1.20.1 specifications.

2. Twin Tee Fitting

In analyzing whether Taco's Twin Tee is within the scope of the order, the Department first reviewed the scope language contained in the NM Pipe Fittings Order. Again, we note that the scope of the order states, "{t}he products covered by this order are finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from ¼ inch to 6 inches, whether threaded or unthreaded, regardless of industry or proprietary specifications." Taco states that the Twin Tee is constructed of cast iron and has an inside diameter of greater than ¼ inch and less than 6 inches. See Scope Ruling Request at 2 and Attachment C. Moreover, Taco provides no argument that the Twin Tee should be considered outside the scope based upon material or diameter. Thus, Taco's Twin Tee satisfies the material and diameter restrictions established by the scope.

As stated above, the scope of the order has three exclusions for cast iron pipe fittings. The order states that "{t}he scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings." Taco has made no claim, nor provided any evidence, that its Twin Tee is covered by any of these exclusions. Thus, we find that these exclusions do not apply.

Having established that Taco's Twin Tee satisfies the material and diameter requirements of the scope, but does not satisfy any of the exclusions provided in the scope, the Department then analyzed whether the Twin Tee is appropriately considered a pipe fitting, as defined by the ITC. As noted above, the ITC stated in its final determination that "{p}ipe fittings generally are used to connect the bores of two or more pipes or tubes, connect a pipe to another apparatus, change the direction of fluid flow, or close a pipe." See Scope Ruling Request at 8, citing the ITC Final Determination at 4. Taco stated that the Twin Tee "is a single pipe fitting designed to replace the two primary circuit tees used to connect a secondary piping circuit to a primary piping circuit in a hydronic system." (Emphasis added.) *Id.* at 10. Thus, Taco acknowledges that the Twin Tee is, in fact, a pipe fitting. Moreover, the scope of the order specifically identifies "tees" as an example of a subject pipe fitting.⁹ Therefore, analysis of the ITC definition supports finding Twin Tees within the scope of the order.

We next examined the reasons offered by Taco as to why its Twin Tee is not covered by the scope of the order. Taco claims that the Twin Tee is excluded from the scope of the order because it is not a general purpose pipe fitting used in the sprinkler/fire protection industry. Rather, it is a specialty product designed for use in Taco's patented hydronic system. See Scope Ruling Request at 11. We disagree with this argument. First, as discussed above, the scope of the order is not defined by end-use application or industry. The scope of the order states that the products covered include all non-malleable cast iron pipe fittings, satisfying the

⁹ Taco acknowledges this fact when it states that "{a}lthough the scope includes products referred to as 'tees' we believe the Twin Tee is not included under this order." See Scope Ruling Request at 10.

physical characteristics identified in the scope, “regardless of industry or proprietary specifications.” Thus, any argument based upon end-use application or industry is not relevant to the Department’s scope ruling. Second, the Petition and the ITC’s final injury ruling state that, while the fire protection/sprinkler system market is the dominant use for the subject fittings in the United States (accounting for approximately 90 percent of shipments), pipe fittings used in steam conveyance systems account for approximately five percent while other industries constitute the remaining five percent of shipments. See Petition at 4; and ITC Final Determination at I-6. Thus, pipe fittings used in industries other than sprinkler/fire protection were intended to be covered by the order (as evidenced by the Petition) and were included in the ITC’s injury analysis (as demonstrated by the statement made in the ITC Final Determination). Moreover, it is unclear whether Taco’s Twin Tee is used in a manner explicitly described in the scope. Taco states that its Twin Tee is used to connect a secondary piping circuit to a primary piping circuit in a hydronic system. See Scope Ruling Request at Attachment C. Applying the definition of “hydronic” stated in the “Black and Green Ductile Flanges” analysis section above, Taco’s Twin Tee could be used in an application that is the same, or very similar to, an application identified in the Petition (i.e., water or heated steam conveyance).

With regard to Taco’s position that the Twin Tee should be excluded from the order because Petitioners in this case do not produce the same type of pipe fitting, we disagree. First, there is no statutory requirement that Petitioners produce all products covered by the scope of the order. See Circular Seamless Determination and accompanying Issues and Decision Memorandum at Comment 1. In other words, Petitioners are not required to produce every model of the foreign-like product. In this regard, just as the scope is not limited based on proprietary specifications, the definition of domestic like product is not limited based on proprietary specifications or use, including use in a patented system. Therefore, whether Petitioners produce a model identical to the products Taco produces is not determinative to the Department’s scope ruling. See Final Scope Ruling at 3-4.

Regarding Taco’s claims that because the Twin Tee does not meet ASTM and ANSI standards and is not UL certified it is not included in the scope of the order, we disagree. The scope of the order states that the products covered include all non-malleable cast iron pipe fittings “regardless of industry or proprietary specifications.” The scope continues, stating, “These cast iron pipe fittings are normally produced to ASTM A-126 and ASME B.16.4 specifications and are threaded to ASME B1.20.1 specifications. *Most* building codes require that these products are Underwriters Laboratories certified.” (Emphasis added.) First, by use of the terms “regardless,” “normally,” and “most,” it is clear that subject merchandise is not limited to exclusively pipe fittings produced to ASTM A-126, ASME B.16.4, and ASME B1.20.1 specifications, nor is it limited exclusively to pipe fittings certified by the UL. Petitioners, by qualifying the specifications with the words “regardless,” “normally,” and “most,” did not intend for the standards included in the investigation to be considered an exhaustive list of the standards applicable to the merchandise covered by the scope of the NM Pipe Fittings Order. Second, the Petition states that the scope covers all non-malleable cast iron pipe-fittings meeting the physical descriptions set forth in the Petition, “regardless of specification.” See Petition at 6. The Petition subsequently states that the scope “includes, but

