

**FINAL REDETERMINATION
PURSUANT TO COURT REMAND
SANGO INTERNATIONAL L.P., v. UNITED STATES**

Court No. 05-00145

Slip Op. 07-101 (CIT July 2, 2007)

SUMMARY

The Department of Commerce (“the Department”) has prepared these results of redetermination pursuant to the remand order issued by the U.S. Court of International Trade in Sango International L.P. v. United States, Slip Op. 07-101 (July 2, 2007) (“MIPF Remand”). This remand concerns the Department’s Final Scope Ruling of January 11, 2005 (“Scope Ruling”) regarding whether gas meter swivels and nuts should be included within the scope of the antidumping duty order on malleable iron pipe fittings (“MIPF”) from the People’s Republic of China (“PRC”). See Antidumping Duty Order: Certain Malleable Iron Pipe Fittings From the People’s Republic of China, 68 FR 69376 (December 12, 2003) (“the Order”).

In accordance with the Court’s order, the Department has reviewed the record evidence and reconsidered whether gas meter swivels and nuts are included within the scope of the Order in light of the criteria set forth at 19 CFR 351.225(k)(2) including: (i) the physical characteristics of the product; (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. We have determined that gas meter swivels and nuts are within the scope of the Order.

On September 25, 2007, we released the Draft Redetermination Pursuant to Court Remand (“Draft Results”) to the parties to this proceeding, and solicited comments. Comments on the Draft Results were received from Sango International L.P. (“Sango”) on October 4, 2007. We requested rebuttal comments from Petitioners on new information placed on the record by Sango on October 11, 2007. Petitioners submitted rebuttal comments on October 18, 2007. The Department has addressed those comments below.

I. ANALYSIS

A. Regulatory Framework

The regulations governing the Department’s scope determinations are found at 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, and the determinations of the Secretary (including prior scope rulings) and the U.S. 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 the subject merchandise is covered by the order. See 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth in 19 CFR 351.225(k)(2). These criteria are: i) the physical characteristics of the product; 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 record evidence before the Department. Previously, the Department issued its determination on whether gas meter swivels and nuts are within the scope of the Order on the basis of 19 CFR 351.225(k)(1) stating that the descriptions contained in the petition, the initial investigation, and the Department's previous scope rulings were dispositive.¹ The Court of Appeals for the Federal Circuit ("CAFC") found in Sango International L.P., v. United States, 484 F.3d 1371 (Fed. Cir. 2007) ("Sango") that the descriptions upon which the Department relied were not dispositive on the matter of whether gas meter swivels and nuts are within the Order. Under the direction of the CAFC through the CIT, we have evaluated whether gas meter swivels and nuts are, in fact, within the scope of the Order based on the criteria outlined by 19 CFR 351.225(k)(2).

B. Description of MIPF in the Petition, the Initial Investigation, and Prior Scope Reviews

In the petition filed on October 30, 2002, Anvil International, Inc. and Ward Manufacturing, Inc. (collectively "Petitioners") described MIPF as follows:

Physical characteristics of malleable iron are somewhat stronger and less brittle than gray iron, *i.e.*, non-malleable iron; therefore MIPF are generally used where shock and vibration resistance are required and where fittings are subject to quick temperature changes. Whereas gray, or cast iron pipe fittings are normally used in sprinkler systems, the principle uses of MIPF are in gas lines, piping systems of oil refineries, and gas and water systems of buildings. MIPF are produced to the American Society for Testing and Materials ("ASTM") standard A-126(A) for production material and produced in accordance with ASME for dimensions and pressure rating. The MIPF are threaded to American National Standards Institute ("ANSI") specifications. MIPF are available in many configurations, the most common being 90 degree elbows, tees, couplings, crosses, and unions. MIPF are produced in both black (ungalvanized) and galvanized form and in size ranges from NPS² one-eighth to NPS six inches. Normally, the ungalvanized fittings are produced to ASTM A-197 specifications and threaded to ANSI B.16.3 specifications, and the galvanized fittings are made to ASTM A-153 specifications and threaded to B.16.14 specifications. MIPF are normally threaded and attached to pipe by screwing.

¹ See Memorandum regarding the "Final Scope Ruling on Whether Meter Swivels and Meter Nuts Are Excluded from the Scope of the Antidumping Duty Order on Malleable Iron Pipe Fittings from the People's Republic of China," dated January 11, 2005.

² Nominal Pipe Size ("NPS").

MIPF have a minimal performance rating of 150 pounds per square inch (“PSI”) for the standard pressure class, and 300 PSI for the heavy duty pressure class.

See petition at pages 4 - 5.

The petition differentiated MIPF from grooved fittings, which are excluded from the investigation, by saying:

The grooved fittings which are excluded from the scope of this investigation and like product are a completely different form of fitting, in which split couplings are attached to a circumferential groove close to the end of each piece to be joined. A gasket inside the coupling seals against the pipe and the coupling.

See petition at page 5.

On November 12, 2002, Petitioners submitted to the Department revised specifications and characteristics for MIPF in the initial investigation. The revised description is as follows:

MIPF are produced to ASTM, ANSI, and ASME specifications. They are available in many configurations, the most common being 90 degree elbows, tees, couplings, crosses, and unions. They are produced in both black (ungalvanized) and galvanized form and in NPS ranges from NPS 1/8 to NPS 6 inches. Normally, the ungalvanized fittings are produced to ASME B16.3 *Malleable Iron Threaded Fittings* or ASME B16.39 *Malleable Iron Threaded Pipe Unions* using ASTM A 197 *Standard Specification for Cupola Malleable Iron* for material and threaded to ANSI/ASME B1.20.1 *Pipe Threads, General Purpose (Inch)* specification, and the galvanized fittings are coated to ASTM A 153 *Standard Specification for Zinc Coating (Hot-dip) on Iron and Steel Hardware* or ASTM B 633 *Standard Specification for Electrodeposited coatings of Zinc on Iron and Steel* and threaded to B1.20.1 specification. MIPF are normally threaded and attached to pipe by screwing. MIPF have a minimal performance rating of 150 PSI for the standard pressure class, and 300 PSI for the heavy duty pressure class. The grooved fittings which are excluded from the scope of this investigation, and like product are a completely different form of fitting, in which split couplings are attached to a circumferential groove close to the end of each piece to be joined. A gasket inside the couplings seals against the pipe and the coupling.

See Petitioners’ November 12, 2002, submission at page 3.

The ITC Report issued in the initial investigation of MIPF from the PRC, Investigation No. 731-TA-1021, Publication 3649 (December 2003) (“ITC Report”) describes MIPF as follows:

MIPF are used for connecting the bores of two or more pipes or tubes, connecting a pipe to some other apparatus, changing the direction of fluid flow, or closing a pipe . . . MIPF

are employed when shock and vibration resistance is required and the fittings must withstand quick temperature changes. MIPF are principally used in the gas and water systems of residential and non-residential buildings and the piping systems of oil refineries. MIPF are distinct from non-malleable fittings and grooved fittings. The Commission found one domestic like product consisting of all MIPF other than grooved fittings, co-extensive with the scope. MIPF are produced for the U.S. market to three separate, uniform specifications: a material specification (ASTM), a dimensional specification (ANSI and ASME), and a thread specification. The principle uses of MIPF are in gas lines, piping systems of oil refineries, and building gas and water systems. MIPF are available in many configurations, the most common being 90-degree elbows, tees, couplings, crosses, and unions. MIPF are produced in both black (ungalvanized) and galvanized form. MIPF are lighter, thinner, stronger, and less brittle than non-malleable cast iron fittings and are used where shock and vibration resistance is required and where fittings are subject to quick temperature changes.

See ITC Report at pages 5, 7-8 and I-6.

The ITC distinguished grooved fittings, which are excluded from the scope, by stating:

Grooved fittings are specifically excluded from the scope. Grooved fittings are produced from ductile or malleable cast iron and are a different type of fitting from threaded or flanged fittings in that a split coupling attaches to a circumferential groove near the end of each piece to be joined. A gasket inside the coupling serves as a seal for the pipe and the coupling.

See ITC Report at pages I-6 - I-7.

The scope of the Order in this case is as follows:

For the purposes of this order, the products covered are certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60, and 7307.19.90.80 of the Harmonized Tariff Schedule ("HTSUS"). Excluded from the scope of this order are metal compression couplings, which are imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts. These products range in diameter from ½ inch to 2 inches and are carried only in galvanized finish. Although HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, the Department's written description of the scope for this proceeding is dispositive.

See Order.

Documents and parts thereof from the underlying investigation deemed relevant by the Department to the scope of the Order were made part of the record of this redetermination and are referenced herein. Documents from the underlying scope inquiry are also a part of the record and are referenced herein. On October 11, 2007, Sango placed the ITC's Preliminary Conference Transcript on the record of this proceeding. Documents that were not presented to the Department or placed by it on the record during the underlying scope inquiry do not constitute part of the administrative record for this scope ruling.

C. Department's Analysis

The issue of this redetermination is whether gas meter swivels and nuts are within the scope of the Order. The CAFC stated in Sango that the underlying record including the petition, the Department and ITC determinations (including prior scope reviews), and the relevant order are not dispositive on this issue.³ The CAFC also stated that gas meter swivels are "indisputably" fittings in the sense that they are able to connect, at least on one side, with a pipe fitting.⁴ However, the CAFC stated that the Department erred in finding that gas meter swivels and nuts are within the Order "because they are parts of a piping system, they direct the flow of the gas through a piping system, and can be, although are not always, connected to other pipe fittings or pipes."⁵ Additionally, the CAFC stated that it is not enough that the swivels and nuts are "parts of a piping system," but "must be the kind of fittings that are covered by the Order."⁶ The CAFC stated that "it cannot be said that the criteria set forth in 19 CFR 351.225(k)(1) are dispositive on the question of whether gas meter swivels and nuts are covered by the Order."⁷

The CIT considered gas meter swivels and nuts as a single entity when considering the Department's Scope Ruling on whether gas meter swivels and nuts were within the scope of the Order.⁸ The CIT treated gas meter swivels and nuts as one unit because they must bind with each other to function. Additionally, the CAFC did not make a conclusion as to whether gas meter swivels and nuts should be considered separately when reviewing the CIT's ruling. Sango and A. Y. McDonald Manufacturing Co. ("McDonald") submitted their scope ruling requests on gas meter swivels and nuts, collectively. Also, the record evidence shows that gas meter nuts cannot be used without gas meter swivels, and that gas meter swivels cannot be used without gas meter nuts. Based on these factors, we find it reasonable to consider gas meter swivels and nuts

³ See Sango, at 1381-1382.

⁴ See Sango, at 1381.

⁵ See id.

⁶ See id.

⁷ See id.

⁸ See Sango International L.P. v. United States, 429 F. Supp. 2d 1356, 1362 (May 1, 2006) at FN8.

collectively when considering whether gas meter swivels and nuts fall within the scope of the Order.

1. Physical Characteristics of the Product (19 CFR 351.225(k)(2)(i))

a) Whether Gas Meter Swivels and Nuts Connect to a Pipe

Parties' Contentions

Sango argues that a typical MIPF generally joins the bores of two pipes or tubes together,⁹ whereas gas meter swivels have male or female threads on one end and a special flange and notch on the other end to fit a gas meter. Sango further argues that “a gas meter swivel must mate with an iron pipe at one end . . .”¹⁰ McDonald claims that gas meter swivels and nuts can only be used to connect a gas meter set to the gas piping system instead of being used to connect pipes. McDonald contends that “gas meter swivels are typically joined to a meter bar and the flanged end is specially designed to join with a gas meter.”¹¹ McDonald argues that “gas meter swivels and nuts do not connect pipe to other pipe or an apparatus.”¹² McDonald claims that “the meter swivel could not be connected to gas pipe because meter nut threads will not mate with standard pipe threads.”¹³ Petitioners argue that “the gas meter swivel, which can have either male or female threads, connects the meter to the gas pipe (which may or may not involve use of a meter bar).”¹⁴ In regard to gas meter nuts, Sango distinguishes a gas meter swivel from a gas meter nut in that a gas meter swivel connects either a gas meter bar or pipe to a gas meter while a gas meter nut only connects a gas meter swivel to a gas meter. Sango contends that “a gas meter nut is usable only in joining the gas meter swivel to a gas meter and unusable to join two pipes together.”¹⁵

Information from Initial Investigation

The ITC Report from the initial investigation states that “MIPF are used for connecting the bores of two or more pipes or tubes, connecting a pipe to some other apparatus, changing the direction of fluid flow, or closing a pipe.”¹⁶

⁹ See Sango’s July 28, 2004, submission at page 8.

¹⁰ See Sango’s October 4, 2004, submission at pages 8 -9.

¹¹ See McDonald’s October 4, 2004, submission at page 3.

¹² See *id.* at page 8.

¹³ See *id.* at pages 3 and 13.

¹⁴ See Petitioners’ October 14, 2004, submission, resubmitted on October 19, 2004, at page 5.

¹⁵ See Sango’s July 28, 2004, submission at pages 8-9.

¹⁶ See ITC Report at page 5.

Analysis

The ITC Report does not specify that one of its described connection characteristics is more “typical” than another. Sango’s arguments ignore a relevant criterion in this case, provided by the ITC in the initial investigation that an MIPF “connect {s} a pipe to some other apparatus.”¹⁷ McDonald states that “a gas meter swivel does not connect a pipe to some other apparatus,”¹⁸ but McDonald does not provide specific evidence to support this statement. While McDonald argues that a gas meter swivel cannot be attached to a pipe and is only used to connect a gas piping system to the gas meter through a gas meter bar, Sango and Petitioners state that gas meter swivels can be attached to a pipe with a male or female threaded end. Documentation on the record, discussed below, confirms that gas meter swivels can have a female or male threaded end, which can connect the gas meter swivel to a gas meter bar, a pipe fitting, or a pipe depending on the specifications of the particular gas meter swivel. For example, while McDonald provides documentation showing gas meter swivels connecting a gas meter to a pipe through a gas meter bar, other documentation provided by Sango shows alternate configurations where gas meter swivels connect directly to a pipe fitting or a pipe.¹⁹ Additionally, the documentation provided by Sango shows that gas meter swivels can have either female or male threads.²⁰ According to Sango, the other end of the gas meter swivel has a flanged end which will only allow it to connect to a gas meter with the assistance of a gas meter nut. This characteristic follows in accordance with the ITC’s description of merchandise included within the scope which states that MIPF “connect a pipe to some other apparatus.”²¹ Various apparatus may require specific physical characteristics of an MIPF to make the proper connection between the apparatus and the pipe. The fact that the specific physical characteristic required by the apparatus may only be used in certain types of MIPF connections does not preclude that MIPF from being covered by the Order.

In an analysis performed by U.S. Customs and Border Protection (“CBP”) to determine the correct Harmonized Tariff Schedule classification for gas meter swivels and nuts, CBP found:

According to an iron and steel pipe fitting industry source, gas meter swivels are considered to be pipe fittings by this industry. The swivel fitting has a National Pipe Thread end. This threaded male end goes into a pipe elbow that connects to the gas piping while the other end goes into the meter. The meter bars are designed so they can be used with a bracket and be screwed into the building. The meter bar consists of two

¹⁷ See ITC Report at page 5.

¹⁸ See McDonald’s October 4, 2004, submission at page 8.

¹⁹ See McDonald’s September 7, 2004, submission at Exhibit F, and Sango’s July 28, 2004, submission at Exhibit B.

²⁰ See Sango’s July 28, 2004, submission at Exhibit B.

²¹ See ITC Report at page 5.

fittings (piping components) on both ends and a “bar” in the center to which a bracket can be attached. The meter bar is designed in this manner to ensure a more secure connection to the building. One end of the malleable cast iron gas meter swivel connects to the meter (“other apparatus”) and the other end connects to the gas piping (tube) as described in the ENs to heading 7307.

See Petitioners’ October 4, 2004, submission at Exhibit 3.

Although the HTS classification is not dispositive on the issue of whether gas meter swivels and nuts are within the scope of the Order, the analysis performed by CBP supports that gas meter swivels and nuts are considered to be MIPF.

The gas meter nut differs from the gas meter swivel in that the gas meter nut is always used for connecting a gas meter swivel to a gas meter.²² Therefore, the Department agrees with Sango’s arguments on the point that a gas meter nut can only be used for connecting a gas meter swivel to a gas meter and cannot be used for connecting two pipes together. However, as explained above, we are considering gas meter swivels and nuts collectively for purposes of this scope analysis.

Therefore, because gas meter swivels can have a female or male threaded end which can connect to a gas meter bar, a pipe fitting, or a pipe depending on the specifications of the particular gas meter swivel, and the gas meter nut enables the gas meter swivel to connect to an apparatus, the gas meter, we find that the physical characteristics of gas meter swivels and nuts, in this respect, indicate that they are the type of fitting included within the scope of the Order.

b) Whether Gas Meter Swivels and Nuts are Manufactured to MIPF Standards

Parties’ Contentions

Sango argues that “ANSI B109.1 is the sole standard applicable to gas meter swivels and nuts.”²³ Sango provided information on ANSI B109.1, which is a standard on gas meters and their accessories, including gas meter connections.²⁴ Sango further states that a “gas meter swivel must mate with an iron pipe at one end, and thus, is threaded accordingly to ANSI B1.20.1 threading standards.”²⁵ McDonald also argues that gas meter swivels and nuts are manufactured to ANSI B109.1,²⁶ and not ANSI B16.3 or ASTM A-126, standards as specified in the petition. Petitioners argue that ANSI B109.1 is simply a thread specification necessary to screw the meter

²² See Sango’s July 28, 2004, submission at page 8.

²³ See Sango’s July 28, 2004, submission at page 8.

²⁴ See Sango’s October 4, 2004, submission at Exhibit I.

²⁵ See id. at page 9.

²⁶ See McDonald’s October 14, 2004, submission at page 7.

nut onto the ferrule of the meter, also known as a spud. According to Petitioners, use of this thread specification simply means that this fitting has a different thread specification because of its application.²⁷

Information from Initial Investigation

The ITC Report indicates that “MIPF are produced for the U.S. market to three separate, uniform specifications: a material specification (ASTM), a dimensional specification (ANSI and ASME), and a thread specification.”²⁸ Similarly, gas meter swivels are produced to an ASTM standard for material, *i.e.*, either ASTM A197 for black (ungalvanized) or ASTM A153 for galvanized gas meter swivels and nuts; an ANSI dimensional specification (B109.1); and an ANSI thread specification (B1.20.1 and B109.1).

The petition states that:

MIPF are produced to the ASTM standard A-126(A) for production material and produced in accordance with ASME for dimensions and pressure rating. The MIPF are threaded to ANSI specifications . . . MIPF are produced in both black (ungalvanized) and galvanized form . . . ***Normally***, the ungalvanized fittings are produced to ASTM A-197 specifications and threaded to ANSI B.16.3 specifications, and the galvanized fittings are made to ASTM A-153 specifications and threaded to B.16.14 specifications.

See petition at pages 4 - 5 (emphasis added).

These specifications were revised in Petitioners’ November 12, 2002, submission to the Department in the original investigation as follows:

MIPF are produced to ASTM, ANSI, and ASME specifications . . . ***Normally***, the ungalvanized fittings are produced to ASME B16.3 *Malleable Iron Threaded Fittings* or ASME B16.39 *Malleable Iron Threaded Pipe Unions* using ASTM A 197 *Standard Specifications for Cupola Malleable Iron* for material and threaded to ANSI/ASME B1.20.1 *Pipe Threads, General Purpose (Inch)* specification, and the galvanized fittings are coated to ASTM A 153 *Standard Specification for Zinc Coating (Hot-dip) on Iron and Steel Hardware* or ASTM B 633 *Standard Specification for Electrodeposited coatings of Zinc on Iron and Steel* and threaded to B1.20.1 specification.

See Petitioners’ November 12, 2002, submission at page 3 (emphasis added).

²⁷ See Petitioners’ October 19, 2004, submission at page 6.

²⁸ See ITC Report at pages 7-8.

Analysis

While Sango argues that ANSI B109.1 is the sole standard applicable to gas meter swivels and nuts, this claim is contradicted by other information submitted on the record by Sango. For example, Sango provided a product information package from Southwest Gas Corporation at Exhibit K of its October 4, 2004, response. At section 2 of this document, the package lists the specifications to which gas meter swivels and nuts are manufactured. It states: “Body: Malleable Iron, per ASTM A197, Threads: per ANSI B1.20.1, ANSI B109.1, and Dimensions: per ANSI B109.1.” Again, at Exhibit M3 of its October 4, 2004, response, Sango provided documentation which states: “Material: ASTM A197, Dimensions: ANSI B109.1, where applicable, Threads: ANSI B1.20.1, ANSI B109.1, Galvanization ASTM A153.” Therefore, compared to the standards described in the ITC Report, record evidence indicates that gas meter swivels are produced to the same three sets of standards as the MIPF which are within the scope of the Order.

Based on the record evidence and the descriptions of the standard specifications for MIPF in the initial investigation, gas meter swivels and nuts meet the material specifications for black (ungalvanized) (ASTM A 197) and galvanized (ASTM A 153) MIPF. In the petition, Petitioners cited to ASTM specification A126 as a material standard for ungalvanized MIPF. Subsequently, in its November 12, 2002, submission, Petitioners revised this specification to indicate ASTM A 197 as the appropriate material standard for ungalvanized MIPF. Therefore, McDonald’s arguments that gas meter swivels and nuts differ from MIPF covered by the scope in that gas meters swivels and nuts are not made to ASTM specification A126 is inapposite.

Gas meter swivels also meet the threading standards (ANSI B1.20.1) on one side for MIPF. Neither the petition nor any documents on the record give specific standards for the flanged end of the gas meter swivel, even though flanged MIPF are included within the scope of MIPF. See Grooved Fitting discussion at section (c) below. The dimensions of gas meter swivels and nuts do not fall under the dimension specifications specifically listed in the initial investigation. However, Petitioners clarified these specifications with the word, ***normally***, meaning that other specifications could apply to MIPF within the scope of the Order. For example, flanged MIPF are included in the scope of the Order, but they would not meet all of the standards identified by Petitioners, as some flanged MIPF are not threaded.²⁹ Therefore, gas meter swivels and nuts meet the mandated specifications for MIPF, and because the domestic like product includes ***all*** MIPF (i.e., is not limited to “typical” MIPF), the specifications included in the petition, initial investigation, and the ITC Report do not exclude MIPF that do not meet the “normal” specifications. The fact that gas meter swivels and nuts are made to meet ANSI standard B109.1, among others, does not exclude them from inclusion as MIPF. Therefore, the physical characteristics, with respect to thread standards, indicate that gas meter swivels and nuts are the type of fitting included within the scope of the Order.

²⁹ See Sango’s October 4, 2004, submission at Exhibit M-2 page 5.

c) Whether Gas Meter Swivels and Nuts are Similar to the Excluded Grooved Fittings

Parties' Contentions

Sango argues that “like the grooved fittings, gas meter swivels and nuts are different from the MIPF in the petition.”³⁰ Sango goes on to state that “meter swivels have a specially shaped flange and notch at one end to fit a gas meter . . .”³¹ McDonald describes gas meter swivels to have a “threaded end and a specially-designed flanged end.”³² Petitioners argue that gas meter swivels are produced with a threaded end and a union end.

Information from Initial Investigation

The ITC Report states that “based on the record, the commission found one domestic like product consisting of *all* MIPF other than grooved fittings, co-extensive with the scope.”³³ The ITC Report distinguishes grooved fittings from MIPF by stating that “they are a different type of fitting from threaded or flanged fittings in that a split coupling attaches to a circumferential groove near the end of each piece to be joined.”³⁴ The ITC Report further states that “MIPF are distinct from non-malleable and grooved cast iron pipe fittings.”³⁵ The petition states that “MIPF are normally threaded and attached to pipe by screwing.”³⁶

Analysis

There is no evidence on the record which indicates that gas meter swivels or nuts attach to either a pipe, pipe fitting, or gas meter with the use of a split coupling. Therefore, gas meter swivels and nuts are not grooved fittings which are excluded from the Order. In fact, all parties have stated that gas meter swivels have a threaded end for connection to a pipe, a pipe fitting, or a gas meter bar. Sango and McDonald also agree that the end of the gas meter swivel that is not threaded is flanged to attach the gas meter swivel to the gas meter. The ITC specifically distinguished grooved fittings from either threaded or flanged fittings. Thus, the flanged end of the gas meter swivel does not distinguish it from the covered MIPF but, in fact, is included in the ITC’s differentiation from the excluded grooved fittings. Therefore, gas meter swivels and nuts are not physically similar to the excluded grooved fittings.

³⁰ See Sango’s July 28, 2004, submission at page 4.

³¹ See *id.*

³² See McDonald’s October 4, 2004, submission at page 3.

³³ See ITC Report at page 5.

³⁴ See *id.* at pages I-6 - I-7.

³⁵ See *id.* at page 5.

³⁶ See petition at page 5.

d) Whether Gas Meter Swivels and Nuts are made to Higher/Lower Pressure Standards

Parties' Contentions

Sango states that gas meter swivels and nuts “require . . . higher tolerances than “typical” MIPF given the pressure that gas is under when it is fed from the main line to the gas meter.”³⁷

McDonald argues that there is no pressure class for gas meter swivels and nuts, unlike MIPF which are generally rated at 150 or 300 pounds per square inch (“PSI”). McDonald claims that the application for gas meter swivels and nuts is less than 2 PSI. Petitioners point out this contradiction between Sango and McDonald’s arguments and directs the Departments attention to specifications on the record which indicate that gas meter swivels and nuts are “tested at 100 PSI.”³⁸

Information from Initial Investigation

The petition states that “MIPF have a minimal performance rating of 150 PSI for the standard pressure class, and 300 PSI for the heavy duty pressure class . . . {and are} somewhat stronger and less brittle than gray iron, *i.e.*, non-malleable iron; therefore, MIPF are generally used where shock and vibration resistance are required and where fittings are subject to quick temperature changes.”³⁹

Analysis

In reviewing the evidence on the record, there is no information on the minimum performance rating of gas meter swivels and nuts. However, information placed on the record by Petitioners as well as information placed on the record by Sango indicate that gas meter swivels and nuts are air tested to 100 PSI.⁴⁰ Further, there is no information on the record which indicates that gas meter swivels and nuts do not meet the minimal performance rating for MIPF of 150 PSI, as the catalogue indicates that in this case the gas meter swivels and nuts were only tested to 100 PSI. Therefore, it is unclear to the Department whether gas meter swivels and nuts are manufactured to a higher or lower pressure standard than MIPF as described in the petition and initial investigation.

³⁷ See Sango’s July 28, 2004, submission at page 8.

³⁸ See Petitioners’ October 19, 2004, submission at Exhibit 2.

³⁹ See petition at pages 4 -5.

⁴⁰ See Petitioners’ October 19, 2004, submission at Exhibit 2, and Sango’s October 4, 2004, submission at Exhibit K.

e) Whether Gas Meter Swivels are made in the “Typical” Shape(s) of the MIPF listed in the Petition

Parties’ Contentions

Sango argues that because Petitioners requested that pricing information on “typical” MIPF shapes including 90-degree elbows, ½ inch black tees, ¾ inch black couplings, and 1 ½ inch black tees be collected during the initial investigation, that Petitioners meant to limit the scope to such-shaped fittings. Sango argues that the list does not include “typical” swivel and nut shapes. Sango further argues that MIPF come only in the form of elbows, tees, crosses, and unions, which are different configurations than any meter swivels. McDonald argues that gas meter swivels are neither 90-degree elbows, tees, couplings, crosses, nor unions, like the MIPF configurations specified in the petition.

Information from Initial Investigation

The petition states that MIPF “are available in many configurations, the most common being 90-degree elbows, tees, couplings, crosses, and unions.”⁴¹ The ITC Report also states that MIPF “are available in many configurations, the most common being 90-degree elbows, tees, couplings, crosses, and unions.”⁴²

Analysis

Sango argues that, because Petitioners requested that pricing information for certain MIPF be collected during the initial investigation, Petitioners meant to limit the scope to such-shaped fittings. However, while Petitioners requested pricing information on 90-degree elbows, tees, and unions, they did not seek pricing information on crosses and couplings, even though the petition and the ITC Report cited crosses and couplings as some of the most common configurations of MIPF. Therefore, there is no basis to conclude that the scope of the Order on MIPF should be limited to those shapes on which pricing information was sought during the initial investigation.

Although Sango argues that gas meter swivels do not come in “typical” MIPF shapes including 90-degree elbows, Sango provides contradicting information by including in its submissions evidence which demonstrates that gas meter swivels are available in the shape of a 90-degree elbow. Sango provides documentation at Exhibit K of its October 4, 2004, response which includes order numbers for 90-degree elbow (gas meter) swivels. Sango also provided documentation at pages 2 and 3 of Exhibit B of its July 28, 2004, response which shows 90-degree elbow (gas meter) swivels. Therefore, although Sango and McDonald argue that gas meter swivels do not come in “typical” MIPF shapes, which include 90-degree elbows, record evidence contradicts these arguments.

⁴¹ See petition at page 4.

⁴² See ITC Report at page I-6.

The ITC Report and the specifications included in the initial investigation simply listed the most common shapes of MIPF and the listing is not exhaustive of all of the shapes of subject MIPF. In fact, the ITC found in the initial investigation that, regardless of shape, there is “one domestic like product consisting of *all* MIPF other than grooved fittings, co-extensive with the scope.”⁴³ In the advertising and product listings for MIPF provided by McDonald, there are several shapes included in the listings that do not fall under the most common shapes of MIPF.⁴⁴ The record demonstrates that gas meter swivels sometimes come in the most common MIPF shapes and the shapes included in the documents from the initial investigation do not provide an exhaustive listing of MIPF shapes. Therefore, the information on the record with respect to this issue indicates that gas meter swivels and nuts are of the type of fitting that falls within the scope of the Order.

Overall, we find that the physical characteristics of gas meter swivels and nuts support finding these products to be within the scope of the Order. We have found that gas meter swivels can connect to a pipe, as do other MIPF covered by the Order, and connect a pipe to another apparatus, the gas meter. We have also found that gas meter swivels and nuts are made to the same material specifications and the same thread specifications, on one side, which allows the gas meter swivels to connect to a pipe. We have found that gas meter swivels and nuts are not similar to grooved fittings, which are excluded from the Order. Additionally, we have found that gas meter swivels are made in the “typical” shapes of the MIPF listed in the petition. Although we have found that it is unclear whether gas meter swivels and nuts are made to the same pressure standards as the MIPF covered by the scope of the Order, overall, we have found that the physical characteristics described above support finding that gas meter swivels and nuts are within the scope of the Order.

2. Expectations of the Ultimate Purchasers and Ultimate Use of the Product (19 CFR 351.225(k)(2)(ii-iii))

Parties’ Contentions

Sango comments that gas meter swivels and nuts are sold only to gas and public utility companies for use with gas meters. Sango states that gas meter swivels and nuts are used in gas systems for connecting a pipe to a gas meter. McDonald maintains that the ultimate use and expectations of customers is that gas meter swivels and nuts are gas meter accessories and not MIPF. McDonald argues that gas utilities own and maintain gas meter sets, including the gas meter swivels and nuts, even after installation, while the ultimate customer of MIPF are plumbing contractors or home-owners, who expect the MIPF to connect pipes. Petitioners contend that the ITC Report indicates that the principal uses of MIPF are in gas lines, piping systems and water refineries, and building gas and water systems.

⁴³ See ITC Report at page 5 (emphasis added).

⁴⁴ See McDonald’s October 4, 2004, submission attachments.

Information from Initial Investigation

The ITC Report states that typical customers of MIPF are plumbing supply wholesale distributors and industrial pipe valve and fitting wholesale distributors as well as both national and regional hardware chains and they expect to use these items for connecting the bores of two or more pipes or tubes, connecting a pipe to some other apparatus, changing the direction of fluid flow, or closing a pipe. The ultimate purchasers of MIPF also include plumbers, HVAC contractors, original equipment manufacturers (“OEM”), and natural gas or water utility companies.⁴⁵ The petition states that while non-malleable iron pipe fittings “are normally used in sprinkler systems, the principle uses of MIPF are in gas lines, piping systems of oil refineries, and gas and water systems of buildings.”⁴⁶

Analysis

While Sango argues that gas meter swivels and nuts are distinguished from MIPF in that they are sold only to gas and public utility companies for use with gas meters, the ITC Report specifically states that the ultimate purchasers of MIPF include natural gas utility companies. Although McDonald argues that the ultimate customer of MIPF are plumbing contractors or home-owners, who expect MIPF to connect pipes, the descriptions set forth in both the petition and the ITC Report do not match McDonald’s assertions about the ultimate MIPF customer. Both the petition and the ITC Report include a much broader customer base than plumbing contractors and home-owners, including HVAC contractors, OEM, and natural gas and water utility companies. Specifically, the petition mentions that MIPF are used in gas lines and piping systems of oil refineries, neither of which are repaired and maintained by plumbing contractors or home-owners. Again, the ITC Report specifically includes natural gas utility companies as one potential customer of MIPF. In addition, the ITC Report includes the specific use of a gas meter swivel and nut by including the criterion that MIPF connect a pipe to some other apparatus. Therefore, the Department disagrees with the distinction that Sango and McDonald attempt to make between MIPF and gas meter swivels and nuts when it comes to customer expectations and ultimate use.

We, therefore, find that the expectations of the ultimate purchasers and ultimate use of gas meter swivels and nuts support finding that these products fall within the scope of the Order. Gas meter swivels and nuts are expected to be used to connect a pipe to another apparatus, a gas meter. The ITC Report specifically indicates that covered MIPF have this same use. The ITC Report also indicates that the ultimate purchasers of MIPF are natural gas utility companies, which are also ultimate purchasers of gas meter swivels and nuts. Therefore, we find that gas meter swivels and nuts are included within the MIPF covered by the Order.

⁴⁵ See ITC Report at page II-1.

⁴⁶ See petition at page 4.

3. Channels of Trade in which the Product is Sold (19 CFR 351.225(k)(iv))

Parties' Contentions

Sango states that “while MIPF are sold at both the wholesale and retail level, gas meter swivels and nuts are only sold to utility companies.”⁴⁷ Sango further states that “gas meter swivels are sold through buy/sell representatives and OEMs.”⁴⁸ Sango contrasts this with MIPF channels of trade which include wholesale pipe, valve, and fitting companies or plumbing wholesalers. Sango argues that while sales of both gas meter swivels and MIPF are made to distributors, they are not the same type of distributors. McDonald argues that while the ITC Report found that MIPF are sold directly to wholesalers and retailers, gas meter swivels and nuts do not flow through retail channels. McDonald argues that, while the ITC Report states that there has been a blurring of the wholesale and retail markets as nationwide hardware stores are moving into the wholesale market by selling MIPF directly to contractors, gas meter swivels and nuts are not sold in any hardware store. Petitioners disagree by stating that “(s)ales to distributors for resale to gas utilities as well as direct sales to gas utilities were both vitally important to domestic producers.”⁴⁹ Petitioners further claim that gas meter swivels and nuts are sold to the same distributors as Petitioners’ other MIPF. Petitioners argue that they sell MIPF and gas meter swivels and nuts directly to gas utilities. Petitioners point to McDonald, an importer of gas meter swivels and nuts as well as MIPF, as an example of a company which sells gas meter swivels, nuts, and other MIPF subject to the scope of the Order.

Information from Initial Investigation

The ITC Report states:

{T}he U.S. market for MIPF is divided into the wholesale/distributor market segment and the retail market segment . . . U.S. producers of MIPF typically sell to wholesalers, which in turn sell to distributors, retail outlets, or directly to end users...Typical customers of these distributors are plumbing supply wholesale distributors and industrial pipe valve and fitting wholesale distributors as well as both national and regional hardware chains . . . Similarly, Ward {one of the Petitioners in the less-than-fair-value investigation} reports that it sells MIPF through distributors or wholesalers, which then sell to plumbers, HVAC contractors, OEM, and natural gas or water utility companies.

See ITC Report at page II-1.

⁴⁷ See Sango’s July 28, 2004, submission at page 10.

⁴⁸ See Sango’s October 14, 2004, submission at page 7.

⁴⁹ See ITC Report at pages 8 - 10 and at II-3.

The ITC Report also discusses that when questioned most purchasers of MIPF reported a blurring of the wholesale and retail market segments.⁵⁰

Analysis

There seems to be little distinction, if any, between the channels of trade for MIPF and gas meter swivels and nuts. The record shows that gas meter swivels and nuts are sold through the wholesale/distributor channel, one of the channels of trade indicated in the ITC Report for MIPF. Although McDonald argues that gas meter swivels and nuts differ from MIPF in that they are not sold in the retail channel, there is nothing on the record which says that every type of MIPF is sold through both channels of trade. That gas meter swivels and nuts are sold in the wholesale and distributor channel of trade, does not exclude gas meter swivels and nuts from the scope of the Order because the ITC specifically included this channel of trade in its report as one of the channels of trade for MIPF.

The initial investigation included both wholesale and retail channels as possible channels of distribution of covered MIPF. Gas meter swivels and nuts are distributed through the wholesale channel and, therefore, fall within the channels of distribution of MIPF covered by the Order. Therefore, we find that the channel of trade in which gas meter swivels and nuts are sold supports finding these products within the scope of the Order.

4. Manner in which the Product is Advertised and Displayed (19 CFR 351.225(k)(v))

Parties' Contentions

Sango claims that “gas meter swivels are advertised separately from MIPF.”⁵¹ Sango also claims that “there is no blurring of the distinction between MIPF and gas meter swivels and nuts.”⁵² Sango states that “gas meter swivels and nuts are advertised and offered for sale as meter accessories rather than as MIPF. MIPF, on the other hand, are advertised and sold in the form of elbows, tees, crosses, and unions.”⁵³ Sango provided advertising from McDonald, an importer of gas meter swivels and nuts, as evidence to show that gas meter swivels and nuts are advertised as gas meter accessories. Sango also provided advertising from Ward Manufacturing, one of the Petitioners, dated November 1, 1987, showing that it also advertised and sold gas meter swivels on a price list separate from MIPF, under the heading “Malleable Iron Gas Meter Swivel Fittings and Connecting Nuts.”⁵⁴ Sango contrasts this with two other price lists for MIPF dated October

⁵⁰ See ITC Report at page II-2.

⁵¹ See Sango’s July 28, 2004, submission at page 10.

⁵² See id. at page 11.

⁵³ See id.

⁵⁴ See Sango’s October 4, 2004, submission at Exhibit M-3.

18, 1993, and October 2, 2000.⁵⁵ Sango claims that Ward Manufacturing no longer produces gas meter swivels and nuts as of February 28, 1997. Sango claims that there is no current domestic production of gas meter swivels and nuts.⁵⁶ McDonald argues that gas meter swivels and nuts are advertised as gas meter accessories or gas distribution products, while industry advertisements for MIPF always consist of the same set of items and this set never includes gas meter swivels and nuts. Petitioners argue that any evidence of differences in advertising “cannot overcome the overwhelming evidence on similarity of physical characteristics and uses.”

Information from Initial Investigation

The ITC Report, initial investigation, and the petition do not contain any descriptions with respect to the advertising of MIPF.

Analysis

We agree with Sango and McDonald that the evidence on the record reflects that gas meter swivels and nuts are advertised separately from MIPF. However, we also agree with Petitioners that differences in advertising are not dispositive with respect to whether gas meter swivels and nuts are within the scope of the Order, because the manner in which gas meter swivels and nuts are displayed is only one of the five criteria being examined.

The record evidence indicates that gas meter swivels and nuts are advertised separately from the MIPF covered by the Order. As discussed above, gas meter swivels and nuts are advertised as products which allow a pipe or a pipe fitting to fit specifically to a gas meter. Alternatively, MIPF for a wide variety of purposes, usually to connect to pipes, are advertised together. Therefore, we find that gas meter swivels and nuts are advertised separately from other MIPF.

D. Draft Remand Conclusion

In accordance with 19 CFR 351.225(k)(2), and pursuant to the MIPF Remand, in the Draft Results we continued to find, consistent with our original ruling, that gas meter swivels and nuts are within the scope of the order. In our Draft Results, we found that the physical characteristics of the merchandise at issue, the expectations of the ultimate purchasers, the ultimate use, and the channels of trade in which gas meter swivels and nuts are sold are the same as the type of merchandise covered by the scope of the Order on MIPF from the PRC. We further found that the manner in which gas meter swivels and nuts are advertised is not the same as MIPF covered by the Order. However, we determined that the manner in which gas meter swivels and nuts are advertised alone is not enough to determine that gas meter swivels and nuts fall outside the scope of the Order. Therefore, consistent with our original ruling, we found that gas meter swivels and nuts are within the scope of the Order.

⁵⁵ See Sango’s October 2, 2004, submission at Exhibits M1 - M2.

⁵⁶ See Sango’s July 28, 2004, submission at page 3.

We issued our Draft Results for comment on September 25, 2007, and received comments on the Draft Results from Sango on October 4, 2007. On October 11, 2007, we granted the Petitioners an opportunity to submit a rebuttal to Sango's comments which included new information, *i.e.*, the Preliminary Conference Transcript from the investigation on MIPF from the PRC by the ITC ("Preliminary Conference Transcript"). On October 18, 2007, Petitioners submitted rebuttal comments on Sango's October 4, 2007, comments. We have summarized the comments received and addressed them below.

II. COMMENTS

1. Physical Characteristics of the Product (19 CFR 351.225(k)(2)(i))

Comment 1: Treatment of gas meter swivels and nuts as a single entity

Sango argues that there is no support on the record for the Department to treat gas meter swivels and nuts as a single entity. Sango claims that the decision of the CAFC reversed the CIT's treatment of gas meter swivels and nuts as a single product and requires that gas meter swivels and nuts be evaluated individually as to whether each product falls within the scope of the Order. Sango contends that the CAFC, in reversing the CIT's treatment of these products, evaluated gas meter swivels and nuts as separate products and found that they differed from the MIPF covered by the Order because they do not mate with pipes in the same manner as the MIPF covered by the Order.

Sango contends that treating gas meter swivels and nuts as separate products is consistent with its request to CBP to classify gas meter swivels and nuts under two separate HTSUS categories. Sango claims its treatment is also consistent with its scope request to the Department which described the physical differences between the gas meter swivel and nut, and with its claim that gas meter swivels and nuts are sold and advertised separately.

Sango claims that all MIPF covered by the Order have female threads that can connect to a pipe. Sango argues that gas meter swivels are outside the scope of the Order because the market is dominated with gas meter swivels which have male threads that cannot connect to a pipe.

Sango argues that gas meter nuts must be specifically sized to match the size of the meter and cannot be connected to the generic threading of a pipe as required by the scope. Therefore, Sango contends gas meter nuts must be excluded from the scope of the Order regardless of the finding on gas meter swivels.

No other party commented on this issue.

Department's Position

The CAFC's remand of the CIT's decision gave no opinion on whether gas meter swivels and nuts should be treated as one entity and did not state that gas meter swivels and nuts should be evaluated separately with regard to the five product analysis criteria set forth at 19 CFR 351.225(k)(2). Rather, the CAFC only ordered the Department to consider the criteria in 19 CFR

351.225(k)(2), and specifically explained that it expressed “no views as to what the results of that determination should be.”⁵⁷

Sango argues that it intended for the Department and CBP to treat gas meter swivels and nuts as two separate products. While Sango requested that CBP reclassify gas meter swivels and nuts identified under two separate HTSUS categories, CBP declined Sango’s request and responded that because gas meter nuts can only be used in conjunction with a gas meter swivel, they should be classified along with gas meter swivels in the single HTS category that covers the MIPF covered by the Order.⁵⁸ In the Preliminary Conference Transcript, Petitioners stated that they believe that “the concordance between the scope and like product and the HTSUS numbers for MIPF other than grooved fittings is extremely high, and in fact that there may be no differences between what comes in those HTS items and what is subject product.”⁵⁹ Also, in their original scope requests to the Department, both Sango and McDonald submitted gas meter swivels and nuts as a single entity, rather than two distinct scope requests on two separate products.⁶⁰

Sango claims that when gas meter swivels and nuts are considered separately, each product will be found outside the scope of the Order. While Sango claims that gas meter swivels differ from the female threaded MIPF covered by the Order in that the gas meter swivel market is dominated by male threaded gas meter swivels, neither the ITC Report, the petition, nor the scope of the Order specify that only female threaded MIPF are included within the scope. It is not relevant to the argument whether male threaded gas meter swivels dominate the market, but whether gas meter swivels and nuts are MIPF which are covered by the scope of the Order.

We find that it is appropriate to evaluate gas meter swivels and nuts collectively for the purposes of the analysis of the criteria at 19 CFR 351.225(k)(2). While we agree that gas meter nuts cannot individually connect to a pipe, we note that a gas meter swivel cannot be used without a gas meter nut. As stated above, there was no statement from the CAFC in its decision which stated that the gas meter swivels and nuts should be analyzed separately with regard to the criteria at 351.225(k)(2) in this redetermination. Additionally, CBP’s finding that gas meter swivels and nuts are never used individually and, therefore, should be categorized under a single HTS category also supports treating gas meter swivels and nuts as a single product. Furthermore, Sango and McDonald submitted their respective requests to the Department on gas meter swivels and nuts as a single unit. While it is true that gas meter swivels and nuts may be advertised and sold separately, these two items must be used jointly, cannot function individually, and thus should continue to be considered as one entity. Therefore, we find that it is appropriate to

⁵⁷ See Sango, at 1382 at FN10.

⁵⁸ See Petitioners’ October 4, 2004, submission at Exhibit 1.

⁵⁹ See ITC’s Preliminary Conference Transcript at page 39 lines 11-16.

⁶⁰ See Sango’s July 28, 2004, submission and McDonald’s September 3, 2004, submission.

evaluate gas meter swivels and nuts as a single product for the purposes of the analysis of the criteria at 19 CFR 351.225(k)(2).

Comment 2: Whether Gas Meter Swivels and Nuts Connect to a Pipe

Sango argues that the Department incorrectly stated that gas meter swivels connect directly to an MIPF or a pipe. Sango claims that a closer examination by the Department of Exhibit B of Sango’s July 28, 2004, submission would show that all swivel connections to a pipe are made by means of an MIPF, union, or valve. Sango maintains that although it has stated that gas meter swivels mate with a pipe at one end, this is typically only possible if a separate MIPF is used to join the swivel and the pipe as both parts have male exterior threads. Sango claims that unlike any other MIPF covered by the Order, gas meter swivels are only threaded on one end to the National Pipe Thread (“NPT”) standard, while the other end is flanged and cannot fit to any article of commerce, including the gas meter for which it is manufactured, without the additional use of a gasket and specially sized gas meter nut to hold it in place. Sango argues that while the CAFC stated that gas meter swivels are indisputably MIPF, in that at least one side can connect with an MIPF, the CAFC also stated that the evidence on the record supports that gas meter swivels and nuts differ from the MIPF that are covered by the Order because the focus of the original investigation was on traditional MIPF, which excluded grooved fittings on the basis of the way they mate and seal with a pipe. Sango argues that the grooved fittings requirement of a gasket in order to seal with a pipe was the differentiating factor on which they were excluded from the Order.

Sango argues that the Department did not address that the flanged end of the gas meter swivel must be mated with a gasket before it can be connected to a gas meter. Sango contends that gas meter swivels are similar to grooved fittings that are excluded from the scope of the Order in that both items require the use of gaskets, the differentiating factor which led to the Department’s exclusion of grooved fittings from the Order in the investigation.

Sango maintains that there is no evidence to support that products, including gas meter swivels, that meet the dimensions covered by the ANSI B109.1 standards were ever intended to be covered by the scope of the Order on MIPF. Sango contends that MIPF covered by the Order are manufactured to the dimensions in ANSI 16.3 or ANSI 16.4. Furthermore, Sango contends that while both gas meter swivels and nuts meet the pressure standards at ANSI B109.1 “Strength of Meter Connections” standards it submitted to the record, the pressure standards alone are not significant.

Finally, Sango argues that the evidence shows that gas meter nut thread standards differ from the thread standards of the MIPF covered by the Order. Sango claims that gas meter nuts have straight threads produced to ASME B1.1 specifications, while MIPF that are covered by the Order are threaded to NPT and ANSI 16.3 specifications. Sango contends that because gas meter nuts have straight threads, they cannot mate with an MIPF or pipe.

Petitioners rebut Sango's comments by arguing that gas meter swivels are not grooved fittings. Petitioners contend that grooved fittings have gaskets on both sides, while the gas meter swivel only has a gasket on one side. Petitioners contend that the gas meter swivel's use of a gasket does not mean that it is a grooved fitting. Petitioners argue that the physical appearances of grooved fittings are dramatically different and have rubber gaskets inside of them.⁶¹

Department's Position

While Sango argues that gas meter swivels cannot connect to a pipe, Sango's submissions include gas meter specifications that demonstrate that gas meter swivels connect directly to a pipe.⁶² Product listings provided by Sango show that MIPF covered by the Order and gas meter swivels can have either male or female threaded ends.⁶³ Diagrams provided by Sango show that there are many different ways that a gas meter swivel and nut can be used to attach a gas meter to a piping system.⁶⁴ Gas meter swivels and nuts can attach a gas meter to a piping system through the use of a gas meter bar, through various types of MIPF, and to pipes depending on the configuration of the gas meter swivel.

While a gas meter swivel may require a gasket, the gasket is used on the flanged end and not on the threaded end which mates with a pipe.⁶⁵ The threaded end of the gas meter swivel mates to a pipe or MIPF by screwing. Grooved fittings have no threading and, therefore, are not screwed. Additionally, the Preliminary Conference Transcript shows that grooved fittings were excluded from the Order because grooved fittings were found to be a separate like product from the MIPF covered by the Order in previous proceedings with the Department and the ITC for reasons discussed further below.⁶⁶

While Sango argues that products covered by ANSI B109.1 standards were never intended to be covered by the scope, Sango focuses on one manufacturing standard above all the other standards to which gas meter swivels are produced. Language from the investigation stated that MIPF are produced to ASTM, ANSI, and ASME specifications.⁶⁷ The ANSI B109.1 standard is included within the ANSI specifications. The language from the investigation also states that "normally

⁶¹ See Preliminary Conference Transcript at page 70, lines 12-15.

⁶² Exhibit I of Sango's October 4, 2004, submission at page 20 "PART III Performance Requirements For New Type Meters."

⁶³ See Sango's October 4, 2004, submission at Exhibit F at page 3, 4, 6, and 16 (Malleable Iron Street Ells and Elbows); see also Sango's July 28, 2004, submission at Exhibit B

⁶⁴ See Sango's October 4, 2004, submission at Exhibit B and Exhibit I at page 20.

⁶⁵ See Sango's October 4, 2004, submission at Exhibit D.

⁶⁶ See Preliminary Conference Transcript at page 7 lines 12-23.

⁶⁷ See Petitioners' November 12, 2002, submission at page 3.

the ungalvanized fittings are produced to ASME 16.3 or ASME B16.39 using material specification ASTM A197 and threaded to ANSI/ASME B1.20.1 . . . galvanized fittings are coated to ASTM A 153 or ASTM B633 and threaded to B.1.20.1.”⁶⁸ Gas meter swivels are manufactured to several standards as follows: “Body: Malleable Iron, per ASTM A197, Threads: per ANSI B.1.20.1, ANSI B109.1, and Dimensions: per ANSI B109.1.”⁶⁹ Gas meter swivels meet the material standard specification listed in the investigation, ASTM A197, and are threaded on one end to the threading standard specifically listed in the investigation, ANSI B.1.20.1. Additionally, although Sango argues that gas meter nuts have straight threads and are threaded to ASME standard B1.1, it does not reference any support on the record to demonstrate its claims. Moreover, record evidence indicates that gas meter swivels and nuts meet the material and threading specifications listed in the investigation for the MIPF that are covered by the Order.

Even though Sango argues that products manufactured to ANSI B109.1 standards were not meant to be included within the scope of the Order, the standards included in the investigation were not intended as an exhaustive list of the standards applicable to the MIPF covered by the Order. This becomes clear in that the standards do not cover flanged MIPF that are covered by the Order and by the use of the qualifier “normally.” The ITC found one domestic like product to include all MIPF other than grooved fittings, co-extensive with the scope.⁷⁰ In the ITC Report, it specifically differentiated both threaded and flanged MIPF from the excluded grooved fittings which require a split coupling to attach to the circumferential groove near the end of each piece.⁷¹ Therefore, we find that gas meter swivels are manufactured to the same standards as MIPF that are covered by the Order.

Parties to this proceeding agree that gas meter swivels have a flanged end on one side and a threaded end on the other. Sango argues that the flanged end of the gas meter swivel requires the use of a gas meter nut and a gasket to make the connection to the gas meter. It is not clear based on record evidence that the gasket, as in grooved fittings, is the essential piece to allow the gas meter swivel to mate with the gas meter. Unlike the threaded end of the gas meter swivel which connects to a pipe by screwing and the threaded gas meter nut which connects to the gas meter by screwing, the Preliminary Conference Transcript indicates that grooved fittings are not threaded.⁷² Additionally, grooved fittings were excluded from the Order because they could be distinguished from MIPF that are covered by the Order because they require split couplings (with

⁶⁸ See petition at pages 4 - 5.

⁶⁹ See Sango’s October 4, 2004, submission at Exhibit K at section 2.

⁷⁰ See Malleable Iron Pipe Fittings from China, 731-TA-1021 (Preliminary), USITC Pub. 3568 (December 2002), at pages 6-7.

⁷¹ See ITC Report at page I-6.

⁷² See Preliminary Conference Transcript at page 72, line 20.

an internal gasket) which are attached to a circumferential groove in order to seal the connection. Both the gas meter swivel and nut seal to the pipe or the gas meter through the use of threading.

We find that it is appropriate that the Department continue to find that gas meter swivels and nuts fall within the scope of the Order because they connect a pipe to an apparatus. Sango has stated on the record that a gas meter swivel can connect to a pipe and has only clarified it by stating that “typical male threaded” gas meters cannot connect directly to a pipe because both the pipe and the gas meter swivel are male threaded with exterior threads. Although gas meter swivels do not meet the “normal” dimension standards listed in the petition, the ITC found in the investigation that the domestic like product included all MIPF, not just MIPF meeting the typical configurations outlined in the petition.

Although Sango argues that gas meter swivels are similar to the excluded grooved fittings because both products use a gasket, the evidence provided by Sango to support this contention does not demonstrate that grooved fittings were excluded for this particular reason. Grooved fittings were excluded from the Order because this product could be distinguished from MIPF that are covered by the scope on the basis that they are not threaded and require split couplings (with an internal rubber gasket) which are attached to a circumferential groove in order to seal the connection.⁷³ Gas meter swivels mate with a pipe through the use of threading and do not require split couplings (with an internal rubber gasket) or even a gasket on the side in order to mate with the pipe or MIPF. Gas meter nuts also connect to a gas meter through the use of threading. Thus, the gas meter swivel and nut unit can connect a pipe to a gas meter through the use of threading. Therefore, the comparison between the use of a gasket by the gas meter swivel and grooved fittings is dissimilar and gas meter swivels and nuts should not be excluded from the Order on this basis.

Comment 3: Expectations of the Ultimate Purchaser and Ultimate Use of the Product

Sango contends, while gas and utility companies may purchase gas meter swivels and nuts, their expectations or use for the products are not the same as MIPF covered by the Order. Sango claims that purchasers of gas meter swivels and nuts requiring connections with specific meters expect them to meet the ANSI B109.1 standards, whereas consumers of MIPF covered by the Order do not expect the MIPF to meet those same standards. Sango argues that consumers of MIPF covered by the Order expect to find these MIPF at retail establishments and within the same price list, whereas consumers of gas meter swivels and nuts do not expect to find these items in retail stores or within the same price lists of other MIPF. Sango also argues that the consumer of MIPF covered by the Order can replace it with any other similarly shaped MIPF, whereas gas meter swivels and nuts are not interchangeable because of their specific size requirements. Sango contends that the record shows that gas meter swivels and nuts can only be used in connections to gas meters, while the MIPF covered by the Order are used in gas lines, piping systems of oil refineries, and gas and water systems of buildings.

⁷³ See Preliminary Conference Transcript at page 68, lines 19-20 and page 69, lines 9-13.

Department's Position

The petition states that MIPF covered by the Order are expected to meet ASTM, ANSI and ASME specifications.⁷⁴ ANSI B109.1 would be included in these specifications. Additionally, ANSI B109.1 is only one standard to which gas meter swivels are manufactured. Gas meter swivels are also manufactured to material standard ASTM A197 and threaded on one end to threading standard ANSI B.1.20.1.⁷⁵ As the investigation language specified a “normal” range of specifications, but included all MIPF other than grooved fittings, there is no record evidence to demonstrate that consumers do not expect certain MIPF covered by the Order to meet ANSI B109.1 standards.

Sango argues that consumers of MIPF covered by the Order expect that they can find these MIPF in retail establishments, whereas consumers of gas meter swivels and nuts do not expect to find these products in retail establishments. Information from the investigation demonstrates that MIPF covered by the Order can be sold through wholesale or retail channels.⁷⁶ This contradicts Sango's statement that consumers of MIPF covered by the Order expect to find these products solely in retail establishments. Additionally, Sango does not point to any evidence that demonstrates that consumers expect all MIPF to be sold through retail establishments or to be covered in one price list. Contrary to Sango's contention, many MIPF covered by the Order are not interchangeable with each other. Evidence from the investigation demonstrates that MIPF covered by the Order come in a variety of shapes to serve a variety of functions including to connect the bores of two or more pipes or tubes, connect a pipe to some other apparatus, change the direction of fluid flow, or close a pipe.⁷⁷ For example, although two MIPF covered by the Order may be available in similar shapes and able to connect two pipes together, these MIPF will not be interchangeable unless they meet the specific dimension criteria for its intended use. Additionally, the petition states that the principle uses of MIPF covered by the Order are in gas lines, piping systems of oil refineries, and gas and water systems of buildings.⁷⁸ Gas meter swivels and nuts meet these end-use criteria as they are used to connect a pipe to some other apparatus in gas lines or gas systems of buildings. Therefore, we find that gas meter swivels and nuts meet the expectations and end-use for MIPF covered by the scope of the Order, as set forth in the investigation.

Comment 4: Channels of Trade in which the Product is Sold

Sango argues that while certain end-users may be the same, manufacturers and distributors of gas meter swivels and nuts maintain separate channels of distribution and sales people. Sango claims

⁷⁴ See petition at pages 4 - 5.

⁷⁵ See Sango's October 4, 2004, submission at Exhibit K at section 2.

⁷⁶ See ITC Report at page II-1.

⁷⁷ See ITC Report at pages 5, 7-8 and I-6.

⁷⁸ See petition at pages 4 - 5.

that an email that it placed on the record from Ward Manufacturing advised that Ward markets through two channels of distribution: (1) gas meter swivels and nuts through buy/sell representatives; (2) MIPF through wholesale pipe fitting companies. Sango argues that the fact that gas meter swivels and nuts are sold from separate price lists than MIPF covered by the Order demonstrates that the channels of trade for gas meter swivels and nuts are different.

Department's Position

The investigation on MIPF indicated that the MIPF covered by the Order can be sold either through wholesale or retail channels and that these distinctions were blurring.⁷⁹ To support its arguments that gas meter swivels and nuts are not sold in similar channels of trade as MIPF covered by the Order, Sango cites to several letters dated from 1993 to 1997 that are from at least six years before the Order on MIPF was put in place. Some of the letters cited are from domestic producers that have gone out of business prior to the Order on MIPF. Therefore, these letters do not reflect the domestic market as it existed at the time of the Order. Sango also points to several emails and faxes from Ward Manufacturing to SGS Manufacturing from October 2004. Sango points to statements within these emails which indicate that gas meter swivels and nuts are sold through buy/sell representatives and OEM manufacturers, and that MIPF are sold through wholesale pipe fitting companies. However, Sango did not demonstrate how either the buy/sell representatives or the OEM manufacturer channels of trade differ from the wholesale or retail channels described in the original investigation.

Sango claims that gas meter swivels are sold from different price lists and by different sales personnel than the MIPF that are covered by the Order. However, the fact that some domestic gas meter swivel and nut suppliers sell gas meter swivels and nuts using separate price lists and sales personnel does not sufficiently demonstrate that gas meter swivels are sold through different channels of trade. We find that gas meter swivels and nuts are sold through wholesale channels of trade, which is one of the potential channels of trade for MIPF covered by the Order as listed in the investigation. Therefore, we conclude that gas meter swivels and nuts are sold in the same channels of trade as the MIPF covered by the Order.

⁷⁹ See ITC Report at page II-2.

FINAL RESULTS OF REDETERMINATION

Based on the above analysis, we recommend that the Department determine that gas meter swivels and nuts are within the scope of the Order on MIPF from the PRC.

David M. Spooner
Assistant Secretary
for Import Administration

Date