

**Final Results of Redetermination Pursuant to
*King Supply Company LLC, d/b/a King Architectural Metals
v. United States, et al.*
Court No. 09-00477, Slip Op. 10-111 (September 30, 2010)**

I. SUMMARY

The U.S. Department of Commerce (the “Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“the Court”) in *King Supply Company LLC, d/b/a King Architectural Metals v. United States, et al.* (“*King Metals*”), Court No. 09-00477, Slip Op. 10-111 (CIT September 30, 2010). On September 30, 2010, the Court remanded the matter to the Department with instructions that the Department issue a scope determination that construes the scope of the order as excluding carbon steel butt-weld pipe fittings (“pipe fittings”) used for structural applications from the scope of the antidumping duty order on certain steel butt-weld pipe fittings from the People’s Republic of China.¹ *See King Metals*, at 13.

In accordance with the Court’s instructions and, as explained further below, we are issuing a scope determination that construes the scope of the order as excluding pipe fittings used only in structural applications, such as the pipe fittings imported and used in structural applications by King Architectural Metals (“King”), from the scope of the *Order*. *See* Memorandum from Edward C. Yang, Senior NME Coordinator to John M. Andersen, Acting Deputy Assistant Secretary, Final Scope Ruling: Antidumping Duty Order on Carbon Steel Butt-Weld Pipe Fittings from the People’s Republic of China, dated October 20, 2009 (“Scope Ruling”).

¹ *See Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings From the People’s Republic of China*, 57 FR 29702 (July 6, 1992) (“*Order*”).

II. BACKGROUND

On March 27, 2009, King requested a scope ruling on whether its pipe fittings are outside the scope of the *Order*. See Carbon Steel Butt-Weld Pipe Fittings from the PRC: Scope Inquiry Request (March 27, 2009) (Scope Inquiry Request). Upon receiving the request and opposition briefs from three domestic producers, Weldbend Corporation (“Weldbend”), Hackney Ladish, Inc., and Tube Forgings of America (“Tube Forgings”),² the Department, on September 4, 2009, asked King to complete a supplemental questionnaire.³ On September 21, 2009, King submitted its supplemental questionnaire response.⁴ Tube Forgings and Weldbend submitted comments on King’s questionnaire response,⁵ and on October 19, 2009, King provided a response to Weldbend’s comments.⁶

On October 20, 2009, the Department determined that King’s pipe fittings were covered by the *Order*. Specifically, we found that King’s pipe fittings meet the physical description of the scope of the *Order*, and that the language in the second sentence of the *Order* serves only to distinguish permanent butt-welding from other types of fastening methods that are not permanent. See Scope Ruling. King challenged the scope ruling before the Court, and on September 30, 2010, the Court issued its opinion with regard to the Department’s determination. In its decision, the Court agreed with the Department that a *Diversified Products* analysis⁷

² See Carbon Steel Butt-Weld Pipe Fittings from the PRC: Opposition to Scope Ruling Request (Tube Forgings) (May 5, 2009); Carbon Steel Butt-Weld Pipe Fittings from the PRC: Opposition to Scope Ruling Request (Hackney Ladish Inc.) (May 14, 2009); Carbon Steel Butt-Weld Pipe Fittings from the PRC: Opposition to Scope Ruling Request (Weldbend) (May 22, 2009).

³ See Carbon Steel Butt-Weld Pipe Fittings from the PRC: Supplemental Questionnaire (September 4, 2009).

⁴ See Carbon Steel Butt-Weld Pipe Fittings from the PRC: Supplemental Questionnaire Response (September 21, 2009).

⁵ See Carbon Steel Butt-Weld Pipe Fittings from the PRC: Comments on Supplemental Information (September 28, 2009); Carbon Steel Butt-Weld Pipe Fittings from the PRC: Comments on King’s Scope Ruling Request (October 8, 2009).

⁶ See Carbon Steel Butt-Weld Pipe Fittings from the PRC: King’s Response to Weldbend’s Second Opposition Letter (October 19, 2009).

⁷ See *Diversified Products Corp. v. United States*, 6 CIT 155, 162, 572 F. Supp. 883, 889 (CIT 1983).

pursuant to 19 CFR 351.225(k)(2) was not necessary on the ground that the relevant scope language is plain or unambiguous, but remanded to the Department the issue surrounding the scope ruling. Specifically, the Court remanded the issue to the Department to issue a scope determination consistent with the Court's opinion.

III. ANALYSIS

As the Court upholds the Department's determination that a *Diversified Products* analysis was unnecessary, on the basis that the scope language is clear, the issue presented by this scope inquiry is whether pipe fittings, such as those pipe fittings imported by King, which are used only to join sections in structural applications, fall within the scope of the *Order*. Specifically, the scope language states:

The products covered by this order are carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS).

See Order, 57 FR at 29702.

In the Scope Ruling, the Department found that King's pipe fittings were included in the scope of the *Order*. However, the Court has stated that the scope of the *Order* does not support the Department's determination that pipe fittings used in structural applications are included in the *Order*.

The Court found that the *Order* language plainly states, "[t]hese formed or forged pipe fittings are *used to join sections in piping systems* where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded,

grooved, or bolted fittings).” See *King Metals* at 5 (emphasis in original). The Court found that the *Order* describes “*the* use (one and only one use) of the pipe fittings subject to the scope of the investigation. No other use is described. As so described, it amounts to an exclusive use. To conclude that this language is merely an example of ‘possible use’ is to impute meaning that the language simply does not possess.” *Id.* (emphasis in original) (citations omitted). The Court further found that the substantial evidence on record “supports finding only two apparent uses for carbon steel butt-weld pipe fittings: in piping systems and in structural applications and the latter were plainly not included specifically in the scope language of the *Order*, which only describes ‘use []... in piping systems.’ ” See *King Metals* at 8. Although we respectfully disagree with the Court’s interpretation of the language in the *Order* as amounting to an exclusive use requirement, we have complied with the Court’s order under protest. In accordance with the Court’s order, we have applied the interpretation of the language of the *Order* as described below.

During the course of this scope proceeding, King explained that its imports of fittings are either used by King to produce handrails and other structural applications, or when those imports are sold to other customers, those customers do not use them in piping systems to the best of King’s knowledge. King provided information and evidence supporting its claim that its fittings were used exclusively in “the production of handrails and other structural applications.” See Scope Inquiry Request, at 7. King also provided photographs illustrating that its fittings, particularly elbow-shaped fittings, are used in handrails and guardrails. *Id.* at Attachment 2.

Consistent with the Court’s opinion and order, for purposes of this remand, we find that fittings imported by King and used by King in structural applications, as described above, are not covered by the scope of the *Order*.

IV. CONCLUSION

In accordance with the Court's instructions, this redetermination pursuant to remand construes the scope of the order as excluding pipe fittings used only in structural applications, such as King's fittings used for structural applications, from the *Order*. Accordingly, if this remand is affirmed by the Court, the Department will issue revised instructions to U.S. Customs and Border Protection once this decision is final and conclusive and the preliminary injunction order entered on December 17, 2009, including but not limited to Entry Nos. UPS-0764011-6 (dated November 14, 2008) and UPS-0766993-3 (dated April 15, 2009), is lifted.

This redetermination is in accordance with the order of the Court in *King Metals*.

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date