



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

~~1570-601~~

Scope Inquiry – Blackstone OTR  
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**PUBLIC FILE**

**DATE:**

~~February 7, 2011~~

**MEMORANDUM TO:**

Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**FROM:**

Wendy J. Frankel *wjf*  
Director, Office 8  
Antidumping and Countervailing Duty Operations

**SUBJECT:**

Tapered Roller Bearings from the People's Republic of China-  
Final Scope Determination on Blackstone OTR's Wheel Hub  
Assemblies

**SUMMARY**

The Department of Commerce ("Department") received requests from Blackstone OTR LLC and OTR Wheel Engineering, Inc. (collectively, "Blackstone OTR") on March 3, 2010, to determine whether wheel hub assemblies are outside the scope of the antidumping duty order ("Order") on tapered roller bearings ("TRBs") from the People's Republic of China ("PRC").<sup>1</sup> On April 15, 2010, we extended the deadline to initiate or rule until June 3, 2010. On May 27, 2010, we extended the deadline to initiate or rule until June 15, 2010. On June 15, 2010, the Department initiated a scope inquiry. On June 30, 2010, we invited interested parties to submit comments, particularly addressing the *Diversified Products'* criteria in accordance with 19 CFR 351.225(k)(2). We also provided one week for rebuttal. On July 14, 2010, Blackstone OTR submitted comments.

In accordance with 19 CFR 351.225(f)(4), we are issuing a final scope ruling concerning Blackstone OTR's wheel hub assemblies. Pursuant to 19 CFR 351.225(k)(1), we recommend determining that Blackstone OTR's wheel hub assemblies are within the scope of the Order.

**LEGAL FRAMEWORK**

The regulations governing the Department's antidumping scope determinations can be found at 19 CFR 351.225. In considering whether a particular product is within the scope of an Order, the Department will take into account the descriptions of the merchandise contained in the scope application as well as the petition, the initial investigation, and the determinations of the Department (including prior scope determinations) and those of the International Trade Commission ("ITC"). See 19 CFR 351.225(d). If the Department determines that these

<sup>1</sup> See *Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China*, 52 FR 22667 (June 15, 1987) ("Order").



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). If the Department finds that it cannot make a determination based on the application and the description of the merchandise referred to in paragraph (k)(1) of the regulations, it will initiate a scope inquiry. *See* 19 CFR 351.225(e).

Where the descriptions of the merchandise are not dispositive, the Department will consider the additional factors set forth at 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. These factors are known commonly as the *Diversified Products* criteria.<sup>2</sup> 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.

### SCOPE OF THE ORDER

The current scope description as published in *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010) is as follows<sup>3</sup>:

Imports covered by this order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15<sup>4</sup> and 8708.99.80.80.<sup>5</sup> Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

### PRODUCT DESCRIPTION

The products subject to this scope inquiry are wheel hub assemblies designed for use on specific Genie Industries self-propelled articulating booms. A self-propelled articulating boom is a type of electric lift equipment that is ideal for reaching up and over very confined areas and narrow

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<sup>2</sup> *See Diversified Products Corp. v. United States*, 572 F. Supp. 883 (CIT 1983).

<sup>3</sup> The Department notes that the scope in the 1987 Order reflects different language with regard to the relevant tariff classifications. At the time the order was issued, the United States was in the process of adopting the HTSUS. After the adoption of the HTSUS, the Order language was revised solely to reflect the new HTSUS schedule. There were no other changes to the scope language from the Order.

<sup>4</sup> Effective January 1, 2007, the HTSUS subheading 8708.99.8015 is renumbered as 8708.99.8115. *See* United States International Trade Commission ("USITC") publication entitled, "Modifications to the Harmonized Tariff Schedule of the United States Under Section 1206 of the Omnibus Trade and Competitiveness Act of 1988," USITC Publication 3898 (December 2006) found at [www.usitc.gov](http://www.usitc.gov).

<sup>5</sup> Effective January 1, 2007, the HTSUS subheading 8708.99.8080 is renumbered as 8708.99.8180; *see id.*

passageways. See Blackstone OTR's March 3, 2010, submission at Tab 2. The wheel hub assemblies in question consist of the following unassembled components: a cast circular hub with a certain number of threaded studs on the outer side; crescent dust cap; two tapered roller cone assemblies; oil seal and 5/8 inch mounting nuts. The cups (outer races for the tapered roller bearing assemblies) are already press-fitted into both ends of the hub. The smaller diameter cone assembly fits into the top end of the hub and will be covered by the dust cap while the larger diameter cone assembly fits into the underside of the hub and will be covered by the oil seal. The bearings fit into the cast hub in such a way that the inner races of the bearings can be mounted on the shaft or axle of the boom. A wheel can then be mounted onto the same shaft or axle by allowing the wheel to be mounted over the studs on the hub. According to Blackstone OTR, its wheel hub assemblies are designed to spin or rotate on a stationary shaft or axle. See Blackstone OTR's March 3, 2010, submission at 1-2.

### INTERESTED PARTY COMMENTS

Blackstone OTR argues that, based on findings by a former U.S. Customs and Border Protection ("CBP") National Import Specialist ("NIS") and the "Explanatory Notes to Certain Provisionally Adopted Chapters of the Harmonized Commodity Description and Coding System"<sup>6</sup> ("ENs"), its wheel hub assemblies are not housed bearings, pillow blocks, flanged housings, or take-up cartridge bearings, and thus are outside the scope of the Order. First, Blackstone OTR argues that the Department should adopt a former NIS's opinion that OTR's wheel hub assemblies, under a longstanding CBP position, were wheel hubs containing a bearing rather than housed bearings. See Blackstone OTR's March 3, 2010 submission at 5-6. To support its claim, Blackstone OTR submitted a declaration from the former NIS<sup>7</sup> and the former NIS's training session video.<sup>8</sup> We note, however, that Blackstone OTR did not cite to any official CBP ruling to support this claim. Second, Blackstone OTR asserts that, according to the definition of bearing housings in the 1982 ENs from the Harmonized Commodity Description and Coding System<sup>9</sup> and subsequent ENs in the current Harmonized Tariff System, bearing housings house ball or roller bearings "in which (or, in the case of a thrust bearing, against which) the ends of a shaft or axle turn." Blackstone OTR argues that its wheel hub assemblies are designed to spin or rotate on a *stationary* shaft or axle, unlike the typical housed bearing which is used to support a *rotating* shaft or axle. As such, Blackstone OTR argues that its wheel hub assemblies are not

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<sup>6</sup> According to CBP Headquarters Ruling H017651, dated February 13, 2009, the Explanatory Notes constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings.

<sup>7</sup> See Blackstone OTR's March 3, 2010, submission at Tab 8.

<sup>8</sup> As part of the NIS' duties from early 1980s until 1996, the NIS conducted a training session on bearings on or about August 24, 1994 that was broadcast via satellite to all ports with Import Specialists that were responsible for determining tariff classification. Blackstone OTR submitted the video to the Department as an attachment to its March 3, 2010, submission.

<sup>9</sup> At the time the order was issued, the United States was in the process of converting the Tariff Schedule of the United States ("TSUS") to a version of the Harmonized Commodity Description and Coding System to be known as the HTSUS. In 1982, in preparation for adoption of the HTSUS, the U.S. ITC issued a report which included the "Explanatory Notes to Certain Provisionally Adopted Chapters of the Harmonized Commodity Description and Coding System." The 1982 ENs is identical to that appearing in the current Harmonized System ENs.

included within the Order because they do not meet the definition of bearing housings as described by the ENs for bearing housings.

## ANALYSIS

The Department finds that Blackstone OTR's wheel hub assemblies meet the physical description of tapered roller housings covered under the Order. The scope of the Order includes "tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use." Blackstone OTR's wheel hub assemblies are essentially tapered roller housings incorporating tapered rollers without spindles that are for non-automotive uses. More specifically, Blackstone OTR's wheel hub assemblies consist of a complete TRB housed within a flanged mounting unit (*i.e.*, wheel hub) which is fixed to a wheel or other apparatus. The eight bolts secure the flanged hub in place and facilitate the axial rotation. As such, Blackstone OTR's wheel hub assemblies meet the physical description of the merchandise covered by the Order. *See* Blackstone OTR's July 14, 2010, submission at 2.

In addition, this finding is supported by the descriptions of merchandise in the Petition and ITC Report. During the LTFV investigation, the merchandise covered by the Petition, and incorporated into the Order, was all TRBs and parts thereof, finished or unfinished from the PRC.<sup>10</sup> In determining what constitutes TRBs and parts thereof, the Department has considered the ITC's findings in "*Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers from Hungary, the People's Republic of China, and Romania*" USITC Publication 1983, Inv. Nos. 731-TA-341, 344, and 345 (final) (June 1987) ("ITC Report"). According to the ITC Report, the scope of those investigations, as defined by the Department of Commerce, included tapered roller bearings, finished and unfinished components of tapered roller bearings, and certain mounted and self-contained tapered roller bearings. *See* ITC Report at A-3.

Additionally, the ITC described tapered roller bearings as follows:

there are four basic components of a tapered roller bearing: the cup, the cone, the cage, and the rollers. The cup, also called the outer ring, is the largest part of the assembly, and its inner surface is tapered to conform with the angle of the roller assembly....The cage, rollers, and cone are joined together to form a cone assembly, which, when joined with a cup, forms a tapered roller bearings set.

*See* ITC Report at 8 and A-4.

Blackstone OTR's wheel hub assemblies consist of the same four basic unassembled elements of a TRB described in both the Petition and the ITC Report: a cup, a cone, a cage, and tapered rollers. According to Blackstone OTR, its wheel hub assemblies include cups that are already press-fitted into both ends of the hub and two cone assemblies (inner races, rollers, and cages). *See* Blackstone OTR's March 3, 2010, submission at Tab 1. The smaller diameter cone

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<sup>10</sup> *See* Petition under Title VII of the Tariff Act of 1930 with respect to tapered roller bearings, tapered rollers and other parts: request for antidumping investigation on imports from Japan, Yugoslavia, Romania, Hungary, Italy, and the People's Republic of China, dated August 25, 1986 ("Petition") at 7.

assembly fits into the top end of the hub and will be covered by a dust cap while the larger diameter cone assembly fits into the underside of the hub and will be covered by an oil seal. *See* Blackstone OTR's March 3, 2010, submission at 2. Thus, once assembled, the cone assemblies join the cups that are already press-fitted into both ends of the hub to form a finished TRB set. *See id.* As such, we find the Blackstone OTR's wheel hub assemblies meet the physical description of TRBs described in the Order since, as described in the ITC Report, it includes the four basic elements of a TRB (*i.e.*, cup, cone, roller and cage).

Further, we disagree with Blackstone OTR's argument that we should adopt the former NIS' opinion that Blackstone OTR's wheel hub assemblies in question, under a longstanding CBP position, are wheel hubs containing bearings rather than housed bearings as contemplated under the HTSUS. *See* Blackstone OTR's March 3, 2010, submission at 6. As an initial matter, we note that CBP rulings are not determinative of the issue of which products are covered by an antidumping or countervailing duty ("AD/CVD") order. For example, although a CBP ruling may classify a product under an HTSUS item number identified in the scope of a particular AD/CVD order, the CBP ruling does not determine that the product is necessarily covered by that AD/CVD order. The HTSUS item numbers may often cover a broad range of products, of which only a subset is subject to that AD/CVD order, or a particular HTS number may not be broad enough to cover all products subject to a particular AD/CVD order. Accordingly, the Department does not define its AD/CVD order scopes by the HTS. Rather, the Department refers to the narrative description as dispositive with regard to coverage of each order. *See* Order.

Additionally, the Department finds that record evidence in support of Blackstone OTR's argument that Blackstone OTR wheel hub assemblies are outside the scope of the Order is unpersuasive. First, Blackstone OTR relies on a declaration by a former NIS to demonstrate that the longstanding CBP position was that these products were outside the scope of the Order. According to Blackstone OTR, the former NIS reviewed Blackstone OTR's wheel hub assemblies and relevant rulings issued by CBP since his departure and concluded that Blackstone OTR wheel hub assemblies, under a longstanding CBP position, were wheel hub bearings containing bearings rather than housed bearings under the HTSUS. *See* Blackstone OTR's March 3, 2010, submission at 6. We note, however, that the former NIS does not cite to any official CBP rulings in order to establish this purported longstanding CBP position or point to any specific facts about Blackstone OTR's wheel hub assemblies that would justify or support his opinion in this declaration. Rather, the declaration includes the former NIS' personal and conclusory opinion, not an official opinion provided by a present NIS while performing his/her regular and official duties as a NIS.

Second, Blackstone OTR argues that previous CBP rulings and training given to import specialists also support the opinion of the former NIS. *See id.* According to Blackstone OTR, its wheel hub assemblies are the same in appearance and function as the wheel hub containing a bearing which was held up by the former NIS during the training session video. *See id.* at 7. The Department finds, however, that it is unable to corroborate this claim since Blackstone OTR provides no evidence that Blackstone OTR wheel hub assemblies are the same in appearance and function as the wheel hub containing a bearing that was held up by the former NIS during the training session video. In fact, we note that even after reviewing Blackstone OTR's wheel hub

assemblies, the former NIS did not state in his declaration that these assemblies are similar in appearance and function as the wheel hub containing a bearing that he held up during the training session video and there is no way to tell what drove the CBP instructor's recommendation in that video. Additionally, the Department finds that Blackstone OTR does not cite to any official CBP rulings that support the former NIS' opinion. While Blackstone OTR relies on a training session video conducted on or about August 24, 1994, to support the opinion of the former NIS, we disagree that this is evidence of an official longstanding CBP position since this is a training session, not an official CBP ruling, provided to guide ports in their HTS classifications. In fact, since then, CBP has issued an official ruling to the contrary. Specifically, the official CBP ruling concludes that Blackstone OTR's wheel hub assemblies are housed bearings, not wheel hubs that contain bearings. Specifically, on February 13, 2009, CBP affirmed its January 8, 2007, ruling that Blackstone OTR's wheel hub assemblies designed for Genie Industries' self-propelled articulating booms were properly classified as a housed bearing. In Headquarters Ruling Letter ("HQ") W968364 issued on January 8, 2007, CBP classified the subject merchandise as other housed bearings, incorporating ball or roller bearings. On September 10, 2007, Blackstone OTR requested a reconsideration of HQ W968364. On February 13, 2009, in HQ H017651, CBP affirmed its January 8, 2007, decision, and concluded that with respect to the subject merchandise:

Like other housed bearings (pillow block or flanged), the subject wheel hub assembly contains insert bearings and has a flat mounting surface. The insert bearing of a housed bearing is a separate and distinct component consisting of an inner and outer ring, cage and rolling elements all of which is generally marketed and sold already within the housing. Flanged housing units, for example, contain insert bearings, a flat mounting surface and as many as four bolts by which the unit is mounted. The subject wheel hub is no different. As with other housed bearings, the shaft diameter correlates with the bore dimensions in which the bearings are inserted and like "four bolt flanged units," the eight bolts secure the flanged hub in place and facilitate the axial rotation.

Hence, we disagree with Blackstone OTR's contention that its wheel hub assemblies are outside the scope of the order based on CBP's purported "long-standing practice" that they are wheel hubs containing bearings rather than housed bearings under the HTSUS. To the contrary, CBP found that Blackstone OTR's wheel hub assemblies are housed bearings, which, contrary to OTR Blackstone's assertions, supports the Department's finding that Blackstone OTR's wheel hub assemblies are housed bearings incorporating tapered rollers.

In addition, Blackstone OTR contends that its wheel hub assemblies are not included within the Order because they do not meet the definition of bearing housings as described by the ENs for bearing housings. According to Blackstone OTR, "since the 1982 ENs were in existence in 1986, when the petition was filed, and are identical in 2009, it must be understood that the 'housing' referred to in the scope requires the ends of a shaft or axle to turn." See March 3, 2010, submission at 4. Blackstone OTR argues, therefore, that based on the 1982 ENs, its wheel hub assemblies are outside the scope of the Order because its wheel hub assemblies rotate around a stationary shaft. See *id.* We disagree with Blackstone OTR's argument that its wheel hub assemblies are outside the scope of the Order based on the definition of bearing housing as described by the ENs.

We find Blackstone OTR's reliance on the ENs misplaced because while the ENs cited by Blackstone OTR address the definition of housed bearings in the Harmonized Tariff System (and in the preceding Harmonized Commodity Description and Coding System), such definitions are not controlling with respect to the scope of antidumping and countervailing duty orders. In fact, the scope of the order in this case specifically states that "{a}lthough the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive." The issue at hand in this scope inquiry is whether Blackstone OTR's wheel hub assemblies meet the description of merchandise covered by the scope of the Order. *See* Blackstone OTR's March 3, 2010, submission at 4. According to 19 CFR 351.225(k)(1), "in considering whether a particular product is within the scope of an order, the Department will take into account the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department (including prior scope determinations) and those of the International Trade Commission (ITC)."

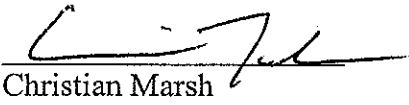
The Department reviewed the descriptions of the merchandise contained in the petition, the initial investigation, the scope of the Order, and the determination of the ITC. We did not find any language that tapered roller housings referred to in these descriptions require the ends of a shaft or axle to turn. As such, we disagree with Blackstone OTR that its wheel hub assemblies are outside the scope of the Order because its wheel hub assemblies rotate around a stationary shaft. Based on the foregoing analysis above regarding the Petition, the initial investigation, the ITC's determination, and the Order, we find that Blackstone OTR's wheel hub assemblies meet the description of merchandise included within the scope of the Order because they meet the description of tapered roller bearings and tapered roller housings incorporating tapered rollers.

### **RECOMMENDATION**

Pursuant to 19 CFR 351.225(f)(4), we recommend that the description of Blackstone OTR's wheel hub assemblies contained in the Scope Request are dispositive when considered pursuant to 19 CFR 351.225(k)(1) because, based on a review of the Petition, the initial investigation, the ITC determination, and the Order, Blackstone OTR's wheel hub assemblies meet the description of tapered roller bearings and tapered roller housings incorporating tapered rollers, without spindles, for non-automotive use.

If you agree with our recommendation, we will notify CBP of our ruling and instruct CBP to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry as directed by 19 CFR 351.225(1)(2). Also, we will send a copy of this memorandum to all interested parties on the scope service list via first class mail as directed by 19 CFR 351.303(f).

Agree  Disagree



Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

2/7/11  
Date