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Scope Inquiry
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MEMORANDUM TO: Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Wendy J. Frankel 
Director, Office 8
Antidumping and Countervailing Duty Operations

SUBJECT: Tapered Roller Bearings from the People's Republic of China:
Final Scope Ruling on New Trend Engineering Ltd.'s Wheel Hub
Assemblies

SUMMARY:

On December 13, 2010, in response to a request by New Trend Engineering Ltd. ("New Trend"), the Department of Commerce ("Department") issued a preliminary scope ruling¹ that New Trend's splined and non-splined wheel hub assemblies without antilock braking system ("ABS") elements are within the scope of the antidumping duty order ("Order") on tapered roller bearings ("TRBs") from the People's Republic of China ("PRC")² because they meet the description of merchandise included in the scope of the Order, Petition,³ and the International Trade Commission ("ITC") Report.⁴ Additionally, we preliminarily determined that, based on the criteria under 19 CFR 351.225(k)(2), New Trend's wheel hub assemblies with ABS elements are within the scope because 1) New Trend's wheel hub assemblies with ABS elements have similar physical characteristics as products covered by the Order; 2) the expectations of ultimate purchasers of New Trend's wheel hub assemblies with ABS elements share the same expectations of ultimate purchasers of products covered by the Order; 3) the ultimate use of New

¹ See "Tapered Roller Bearings from the People's Republic of China: Preliminary Scope Determination on New Trend's Wheel Hub Assemblies," dated December 13, 2010 ("Preliminary Ruling").

² 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").

³ 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").

⁴ See *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 45 (June 1987) ("ITC Report").



Trend's wheel hub assemblies with ABS elements is similar to the ultimate use of products covered by the Order; 4) New Trend's wheel hub assemblies with ABS elements are sold in the same channels of trade as products covered under the Order; and 5) New Trend's wheel hub assemblies with ABS elements are advertised and displayed similarly to products covered by the Order.⁵

After consideration of the parties' post-preliminary comments, for the final ruling we recommend that you approve the positions described in the Discussion of the Issues section of this memorandum and continue to find that New Trend's wheel hub assemblies, both with and without ABS elements, that incorporate TRBs, are within the scope of the Order.

BACKGROUND:

The Department received a request from New Trend on March 5, 2010, to determine whether certain TRB wheel hub assemblies are outside the scope of the Order. On April 15, 2010, we extended the deadline to initiate or rule by 45 days 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 requested that interested parties submit comments addressing the *Diversified Products* criteria in accordance with 19 CFR 351.225(k)(2). On July 14, 2010 and July 22, 2010, New Trend, the Timken Company ("Petitioner"), and Power Train Components ("PTC"), an interested party, submitted comments and rebuttal comments, respectively. On August 3, 2010, officials from the Department met with officials from and representing Petitioner to discuss issues regarding the scope inquiries on TRB wheel hub units. On September 7, 2010, officials from the Department met with counsel to New Trend, and counsel and officials on behalf of PTC, to discuss issues regarding the scope inquiry on New Trend's wheel hub units. New Trend and PTC brought samples of wheel hub units for viewing by other parties to the September 7, 2010, meeting. The samples have been placed on the record.⁶

On December 13, 2010, the Department preliminarily determined that New Trend's splined and non-splined wheel hub assemblies without ABS elements meet the description of tapered roller housings included in the scope of the Petition, the ITC Report, and the Order, pursuant to 19 CFR 351.225(k)(1). Pursuant to 19 CFR 351.225(k)(2), we also preliminarily determined that New Trend's splined and non-splined wheel hub assemblies with ABS technology are within scope based on the *Diversified Products* criteria. See Preliminary Ruling.

On December 20, 2010, New Trend, Petitioner, PTC, Bosda International (USA) LLC ("Bosda") and Kingdom Auto Parts, Ltd. ("Kingdom") submitted comments on the Department's Preliminary Ruling.⁷ On December 27, 2010, Petitioner submitted rebuttal comments.

⁵ See *Diversified Products Corp. v. United States*, 572 F. Supp. 883 (CIT 1983).

⁶ See Memorandum to the File, regarding "Tapered Roller Bearings ("TRBs") from the People's Republic of China Scope Inquiries—Wheel Hub Units," dated September 9, 2010.

⁷ On October 28, 2010, Bosda and Kingdom Autoparts filed their own request for a scope inquiry to determine whether wheel hub assemblies incorporating TRBs are outside the scope of the order on TRBs from China. According to their submission, Bosda and Kingdom's wheel hub assemblies are materially identical to those of New

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 petition, the initial investigation, and the determinations of the Department (including prior scope determinations) and those of the ITC. *See* 19 CFR 351.225(k)(1). 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(k)(1). 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.⁸ 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 and Unfinished, From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011) is as follows⁹:

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, 8708.99.80.15¹⁰ and 8708.99.80.80.¹¹ Although the HTSUS item numbers are provided

Trend covered by the instant proceeding.

⁸ *See Diversified Products Corp. v. United States*, 572 F. Supp. 883 (CIT 1983).

⁹ The Department notes that the scope in the Order reflects different language. 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 was revised to include the new HTSUS schedule.

¹⁰ Effective January 1, 2007, the HTSUS subheading 8708.99.8015 is renumbered as 8708.99.81.15. *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,"

for convenience and customs purposes, the written description of the scope of the order is dispositive.

PRODUCT DESCRIPTION:

New Trend's request covers wheel hub assemblies that are used with front wheels of an automobile. Although there are several different types¹² of wheel hub assemblies that are subject to this scope request, all of them incorporate two non-removable TRBs in an inner race and cup that are machined into the unit's flange, an outer race machined into the assembly forging, wheel and brake "pilots" for aligning the wheels and brake rotors, and mounting wheel studs. The majority of the assemblies consist of a flanged outer hub with two TRBs, into which has been pressed a flanged spindle having a splined inner surface and mounting studs. The wheel hub assemblies are "sealed for life," "greased at factory," and "the bearing preload is set at factory." See New Trend's March 5, 2010, submission at Exhibit B. Certain of the products do not have a splined spindle and certain of the products include ABS capability. New Trend's wheel hub assemblies may be categorized into the following types of merchandise: (1) splined and non-splined without ABS elements and (2) splined and non-splined with ABS elements. See New Trend's March 5, 2010, submission at 2 and Exhibit B.

DISCUSSION OF THE ISSUES:

Comment 1: Whether the Department reasonably interpreted the scope of the Order

- New Trend, PTC, Bosda, and Kingdom argue that the Department failed to identify language in the scope of the Order that could be reasonably interpreted to include New Trend's wheel hub assemblies without ABS elements and is, thus, inconsistent with judicial precedent.¹³
- Petitioner rebuts that the Department and the courts have recognized that the scope language need not identify every variation of the merchandise that is covered by the scope and that the absence of a detailed description of the product in the scope will not necessarily indicate that the product is not subject to an Order.¹⁴

Department's Position: We disagree with New Trend, PTC and Bosda and Kingdom's claim that the scope of the Order cannot be reasonably interpreted to include wheel hub assemblies without ABS elements. As discussed below, we have determined, consistent with *Duferco Steel*, that the scope of the Order covers wheel hub assemblies. See Bosda and Kingdom's December 20, 2010, submission at 2.

USITC Publication 3898 (December 2006) found at www.usitc.gov.

¹¹ Effective January 1, 2007, the USHTS subheading 8708.99.8080 is renumbered as 8708.99.81.80; see *Id.*

¹² See Exhibit 1.

¹³ *Vertex Int'l, Inc. v. United States*, 30 C.I.T. 73, 2006 Ct. Intl. Trade LEXIS 10 (Jan. 19, 2006); ("*Vertex*"); *Duferco Steel, Inc. v. U.S.*, 296 F.3d 1087, 1095 (Fed. Cir. 2002) ("*Duferco Steel*").

¹⁴ 19 CFR 351.225(a); *Novosteel SA v United States*, 284 F.3d 1261, 1269 (Fed. Cir. 2002) ("*Novosteel*"); *Dufuerco Steel*, 296 F. 3d at 1096-97.

The U.S. Court of Appeals for the Federal Circuit (“CAFC”) has recognized that the scope language need not identify every variation of the article that is subject to the scope. *Novosteel*, 284 F.3d at 1269-71 (holding that scope orders must be written in general terms and that the Department may interpret and clarify its antidumping orders). In *Duferco Steel*, the CAFC held that “{s}cope orders may be interpreted as including subject merchandise only if they contain language that specifically includes the subject merchandise or *may be reasonably interpreted to include it.*” See *Duferco Steel* at 1089 (emphasis added). While the scope does not explicitly list “wheel hub assemblies,” we have determined that tapered roller housings with spindles, whether splined or non-splined, are covered by the scope of the Order. We find that New Trend’s wheel hub assemblies without ABS elements are tapered roller housings in that the outer flange is a flanged housing that incorporates TRBs. This is consistent with the scope of the Order, which expressly includes “tapered roller housings incorporating tapered rollers, with or without spindles, whether or not for automotive use.” See scope of the Order *supra*.

Additionally, according to New Trend, the majority of its wheel hub assemblies consist of a flanged outer hub, into which has been pressed a spindle having a splined inner surface. See New Trend’s March 5, 2010, submission at 2. New Trend’s other wheel hub assemblies without ABS elements have non-splined spindles. See New Trend’s March 5, 2010, submission at 2. Thus, because New Trend’s splined and non-splined wheel hub assemblies without ABS elements are essentially tapered roller housings with spindles, we find that the language in the scope of the Order covers New Trend’s wheel hub assemblies without ABS elements. This is in accordance with *Duferco Steel* because we interpret the language of the order to include New Trend’s wheel hub assemblies without ABS elements. This determination remains unchanged from the Preliminary Ruling. See Preliminary Ruling at 8.

Comment 2: Whether the Department properly relied on the scope of the Order

- New Trend and PTC argue that the Department improperly relied on the ITC Report and Petition rather than the language of the scope itself in determining that wheel hub assemblies without ABS elements are within the scope of the Order.¹⁵
- Petitioner argues that the lynchpin of the Department’s ruling is the scope language in the Order, not the ITC Report.

Department’s Position: As discussed above, we have determined that the scope language of the Order includes wheel hub assemblies without ABS elements. We have also determined that the language of the Petition and the ITC Report support this determination, and aid in our analysis of the scope of the Order. Because the Petition covered all types of TRBs, including “self-contained bearing packages,” and the ITC Report identified wheel hub units as falling under the category of “self-contained tapered roller bearing packages,” we refer to the Petition and ITC Report to confirm the accuracy of our interpretation of the actual scope language to include New Trend’s products without ABS elements. According to the ITC Report, wheel hub units are a type of tapered roller housing:

¹⁵ *Vertex Int’l, Inc. v. United States*, 30 C.I.T. 73, 2006, Ct. Intl. Trade LEXIS 10 (Jan. 19, 2006); (“*Vertex*”); *Dufuerco Steel*, 296 F.3d at 1097-98.

Wheel hub units are also prelubricated, preset, double-row tapered roller bearings that have been sealed; however instead of a cup, the cone assemblies are sealed into a cast, flanged *housing* with bolt holes for direct mounting onto the wheel hub. The flanged *housing* performs as the outer race of the bearing, taking the place of the typical tapered roller bearing cup.

See ITC Report at A-7 (emphasis added). Thus, the Petition and the ITC Report make it clear that wheel hub units are included among the tapered roller housings with spindles for automotive use under consideration during the investigation. Accordingly, in reliance on the language of the scope of the Order as interpreted with the aid of the Petition and the ITC Report, the Department finds New Trend's wheel hub assemblies without ABS elements are within the scope of the Order.

We disagree with New Trend and PTC's argument that our reliance on information other than the scope of the Order is improper. PTC argues that the courts have ruled that while the Department may define and clarify the scope of an antidumping order, it cannot "interpret an antidumping order so as to change the scope of that order, nor can {the Department} interpret an order in a manner contrary to its terms." See *Vertex*, 30 C.I.T. at 81, quoting *Duferco Steel*, 296 F.3d at 1095. We do not agree that our ruling runs counter to these principles. We also disagree with New Trend's argument that the Department erroneously relies on the Petition and makes the ITC Report the lynchpin of its Preliminary Ruling. In *Walgreen Co. v. United States*, 620 F.3d 1350 (Fed. Cir. 2010), the CAFC explained that the language of the Order itself remains the "cornerstone" in any scope determination: "while the petition, factual findings, legal conclusions, and preliminary order can aide in the analysis, they cannot substitute for the language of the order itself, which remains the 'cornerstone' in any scope determination." (quoting *Duferco Steel*, 296 F.3d at 1097). We have relied on the language of the Order and found that New Trend's wheel hub units without ABS elements meet the physical description of subject merchandise as *explicitly* stated in the Order (*i.e.*, tapered roller housings). As such, we have not substituted the Petition or the ITC Report for the language of the Order in reaching our determination. This determination is unchanged from the Preliminary Ruling. See Preliminary Ruling at 6-8.

Comment 3: Whether the Department erroneously analyzed the ITC Report and Petition

- New Trend, Bosda, Kingdom, and PTC argue the Department's Preliminary Ruling is premised on a misunderstanding of the ITC Report and Petition.
- Petitioner argues that the features identified by New Trend (other than the ABS elements) were identified in the Petition and ITC Report so there is no basis for removal of New Trend's wheel hub assemblies from the scope and no need to further analyze them.

Department's Position: In the ITC Report, the ITC examined the range of TRB products covered by the scope of the Department's investigation:

The scope of these investigations as defined by the Department of Commerce includes tapered roller bearings, finished and unfinished components of tapered roller bearings, and certain mounted and self-contained tapered roller bearings. Each of these products is discussed in detail below in the sections on product description and manufacturing process....

See ITC Report at A-3.

The ITC specifically identified wheel hub units as one category of in-scope products and described them as “self-contained tapered roller bearing packages.” According to the ITC, these “self-contained tapered roller bearing packages include cartridge bearing units and wheel hub units” and “the next generation of the self-contained units will have flanged inner and outer rings as part of the assembly.” See ITC Report at A-6. Based on this, we have determined that the next generation of wheel hub units, with their flanged inner and outer rings as part of the assembly, would still be a type of self-contained tapered roller bearing package, subject to the scope of this proceeding. Therefore, we determine that the ITC Report supports a finding that wheel hub units are within the scope of the Order.

New Trend and PTC argue the Department erroneously inferred from the “next generation statement” in the ITC Report that the ITC made a substantive ruling that such “next generation” items are within the scope when the ITC did not indicate that was its intent. See New Trend’s December 20, 2011, submission at 8. According to New Trend, the passage in the ITC Report did not state that the future product would also be in-scope merchandise. See New Trend’s December 20, 2011, submission at 8. PTC argues that in referring to the ITC’s “next generation statement,” the Department added the statement to the Order. See PTC’s December 20, 2010, submission at 6.

We disagree that in referring to the “next generation statement” in the ITC Report, the Department added the statement to the Order. In making our determination, we look to the Order to determine whether New Trend’s splined and non-splined wheel hub assemblies without ABS elements with a spindle are included within the Order. We also refer to the ITC Report to aid in the analysis of the accuracy of our interpretation. The scope’s language in the Order (*i.e.*, tapered roller housings with spindles for automotive use) is broad and includes multiple products that have varied applications. Based on the Order’s broad and generic language covering tapered roller housings with a spindle, which is supported and clarified by the ITC Report and its statement about the features added in the “next generation” of wheel hub units, we determine that the Order covers the types of products imported by New Trend that are subject to this ruling.

Additionally, PTC argues that the Preliminary Ruling gives “blanket effect” to the ITC’s mention of future generations of wheel hub assemblies. PTC argues it is absurd to describe a wheel hub assembly that incorporates TRBs and an engine to power the adjacent wheel as a “bearing” or a “housed bearing” given the extent of their additional structures and functions. For example, PTC argues that some automobiles, like Porsche, have been built with wheel hub mounted engines, and this ruling could define an automobile as a “housed bearing.”

We disagree that we have given “blanket effect” to the ITC’s mention of future generations of wheel hub assemblies. In this case we examined that language in the context of the specific products subject to this particular scope enquiry. The Department’s regulations at 19 CFR 351.225 provide that, if the Department finds that it cannot make a ruling based on the application and the description of merchandise referred to in 19 CFR 351.225(k)(1) of the regulations, the Department will consider additional factors set forth at 19 CFR 351.225(k)(2). Additionally, 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. *Id.* In making its ruling, the Department did exactly that. The Department has considered New Trend’s wheel hub assemblies on a product-by-product basis.

With respect to New Trend’s wheel hub assemblies without ABS elements, the Department applied the 19 CFR 351.225(k)(1) analysis because the scope language, as interpreted with the aid of the Petition and ITC Report, is dispositive. The Department has not relied solely on the ITC’s mention of future generations in its finding that wheel hub assemblies without ABS elements are subject to the Order, as discussed in Comment 1 above.

With respect to New Trend’s wheel hub assemblies with ABS elements, the Department determines that the description of the merchandise contained in the Order, Petition, and ITC Report is not dispositive. Accordingly, the Department has continued to analyze these products under 19 CFR 351.225(k)(2) to determine whether New Trend’s wheel hub assemblies with ABS elements are within the scope of the Order in the Preliminary Ruling.

As such, the Department finds that the Preliminary Ruling did not give “blanket effect” to the ITC’s mention of future generations of wheel hub assemblies because the Department’s determination is based on the characteristics of the two categories of New Trend’s wheel hub assemblies at issue in this ruling. This is unchanged from the Preliminary Ruling. *See* Preliminary Ruling at 8. The Department does not agree that its product-by-product analysis, as described above, leads to the conclusion that a housed bearing could be interpreted to include an automobile.

New Trend also argues that its wheel hub assemblies should be excluded from the Order because the Petition identified the UNIPAC and UNIPAC-PLUS products as the “unitized bearings,” “bearing cartridges,” and “wheel hub units” within the ambit of the scope, but did not identify the types of wheel hub assemblies imported by New Trend. *See* New Trend’s December 20, 2010 submission at 9. According to New Trend, these items (UNIPAC and UNIPAC-PLUS) may be parts of wheel hub assemblies, but are not the whole wheel hub assemblies. As such, PTC and New Trend argue that the Preliminary Ruling incorrectly equates integrated wheel hub assemblies with their component bearings and expands the scope of the Order impermissibly by including not only TRBs, but also integrated machine elements of which TRBs are only components. *See* PTC’s December 20, 2010, submission at 8.

We disagree. The Petition covered all types of TRBs, including “self-contained bearing packages,” and the ITC Report identified wheel hub units as products that fall under the category

of “self-contained tapered roller bearing packages.” *See* Preliminary Ruling at 1. According to the ITC Report, the UNIPAC and UNIPAC-PLUS bearings are types of “self-contained tapered roller bearing packages.”¹⁶ The fact that UNIPAC and UNIPAC-PLUS bearings are covered by the scope of the order, however, does not preclude an assembly that includes UNIPAC or UNIPAC-PLUS bearing from being covered by the order as well. Such an assembly may constitute “tapered roller housings ... incorporating tapered rollers, with or without spindles, whether or not for automotive use” as interpreted with aid of the ITC Report and the Petition. The Petition in particular indicates that a wheel hub assembly that includes the UNIPAC and UNIPAC-PLUS bearings were intended to be covered. Included as part of the Petition are examples of the types of TRBs (*i.e.*, wheel hub assemblies) that were part of its scope. At Exhibit 3 of the Petition, the advertisement sheet entitled “Introducing the Front-Wheel-Drive Bearing That Practically...” pictured a splined wheel hub unit and labeled it as a “self-contained bearing package.” Additionally, the Petition included another exhibit entitled, “We Give You More Ways Than Anybody to Taper Your Front-Drive Wheel Costs” at Collective Exhibit 3. This exhibit expressly mentioned that the “complete wheel packages, with bearing, spindle and housing, is pre-set, presealed, and prelubed for quick assembly” and did not include any limitations on the complete wheel hub package. As such, the Department has interpreted the scope language, with the aid of the Petition and ITC Report, to include the type of wheel hub units imported by New Trend without ABS elements.

Comment 4: Whether New Trend’s wheel hub assemblies with additional functionalities, are tapered roller housings with spindles included within the scope of the Order

- New Trend, Bosda, and Kingdom argue that New Trend’s wheel hub assemblies are not housings because they provide additional functions (*i.e.*, torque transmission, braking torque transmission, and ABS functionality) that exceed TRBs and tapered roller housings. PTC, Bosda, and Kingdom argue that the scope makes no mention of these additional functions.
- Petitioner agrees with New Trend that a tapered roller housing without a spindle cannot provide the functions served by brake pilots, wheel pilots, a wheel mounting face, wheel studs, and ABS units. Petitioners argue that because the Order covers tapered roller housings with spindles, and the spindles provide the additional functions served by brake pilots, wheel pilots, a wheel mounting face, wheel studs, and ABS units, New Trend’s wheel hub assemblies are subject to the Order.

Department’s Position: We disagree with New Trend, Bosda, and Kingdom’s argument that New Trend’s wheel hub assemblies, with additional functions (*i.e.*, drive torque transmission, braking torque transmission, and ABS functionality), are not tapered roller housings. *See* Bosda’s and Kingdom’s December 20, 2010, submission at 3; *see also* New Trend’s submission at 4. According to New Trend, a tapered roller housing consists only of the TRBs and attached flange by definition and, thus, cannot provide the additional functions provided by a wheel hub assembly. By that token, New Trend argues, a product that is able to provide those functions does not qualify as a tapered roller housing.

¹⁶ *See* ITC Report at A-7 footnote 1.

We find that the language of the scope of the Order does not exclude variations of tapered roller housings that perform additional functions from those noted by New Trend. New Trend, PTC, Bosda, and Kingdom have pointed to no evidence that would suggest that the Department's scope was intended to exclude these variations of TRB wheel hub units. First, the language of the scope's Order did not expressly include a limitation on the types of features and functions that tapered roller housings with spindles may possess. Rather, the scope's language in the Order states that the scope would include tapered roller housings with spindles whether or not for automotive use, and so we have determined that New Trend's wheel hub assemblies (both with or without ABS elements) are covered by the scope of the Order. *See* Order.

Additionally, the ITC Report and Petition confirm that wheel hub assemblies with additional functions were covered by the proceeding. As described above, according to the ITC Report, wheel hub units are TRBs that have been sealed into a flanged housing, and the next generation of wheel hub units was expected to have flanged inner and outer rings as part of the assembly to allow the wheel hub unit to take over the functions of other, usually separate, components in the wheel hub system. *See* ITC Report at A-7. In light of the wide variation of TRB products that would be covered, the ITC discussed these assemblies, with their additional functionalities, in terms of falling under a category of products subject to the proceeding. *See* ITC Report at A-3 and A-7. Similarly, as discussed above, the Petition supports our interpretation that New Trend's wheel hub assemblies with their additional functionalities are covered by the Order because the exhibits attached to the Petition include wheel hub units with splined surfaces that specifically provided for additional functionality such as drive and braking torque transmission functions. *See* Exhibit 3 of the Petition, where the advertisement sheet entitled "Introducing the Front-Wheel-Drive Bearing That Practically..." pictures a wheel hub assembly with a splined surface, which provides drive and braking torque transmission functions for a front-wheel drive vehicle. Accordingly, the ITC Report and Petition confirm that wheel hub units with flanged inner and outer rings/races and additional functionalities were addressed by the Petition as falling within the scope of the proceeding and subsequent Order.

In PTC's July 14, 2010, submission, PTC included the affidavit of an expert witness, Dr. Shorya Awtar. New Trend cites to Dr. Shorya Awtar's affidavit and argues that a wheel hub assembly provides important additional functionality unrelated to the TRBs—drive torque transmission, braking torque transmission, and ABS capability—that are entirely independent of the functionality of a bearing (including a housed bearing) but are equally important to the operation of a vehicle. *See* PTC's July 14, 2010, submission at Exhibit B. According to New Trend, the additional functions make it impossible to conclude that one function predominates over another; therefore, New Trend's wheel hub assemblies with its additional functionalities are outside of the scope of the Order because they do not have one essential function but rather multiple essential functions.

We do not disagree that New Trend's wheel hub assemblies may have features that provide additional functionality beyond that of reducing friction. In his affidavit, Dr. Awtar compares the "core functionalities" of a TRB wheel hub unit with a wheel hub unit containing a splined spindle and/or ABS elements. With respect to the TRB wheel hub unit, Dr. Awtar states that the

TRB wheel hub unit is a “bearing assembly” or “housed bearing” that falls under the definition of a bearing. *See* PTC’s July 14, 2010, submission at Exhibit B (“Dr. Awtar’s affidavit”) at 5. Dr. Awtar states that a bearing accomplishes the following: (1) the bearing defines the relative motion between the inner race (Component A) and the outer race (Component B) to be a rotation about the X axis and restricts all other five relative motions—linear motions along the X, Y, and Z axes, and torsional force about an axis; (2) the bearing transmits loads from Component A to Component B along the constrained directions; and (3) the bearing reduces friction experienced during the allowed relative motion between Components A and B (*i.e.*, rotation about the X axis). *See* Dr. Awtar’s affidavit at 2. According to Dr. Awtar, these functions define a bearing. In contrast, Dr. Awtar states that a TRB wheel hub unit with a splined spindle and/or ABS elements are not bearings; rather, he suggests that they are automotive wheel hub assemblies that also incorporate additional functionalities that are entirely independent of the functionality of the bearing (including a housed bearing) but are equally important to the operation of a vehicle. However, according to Dr. Awtar, splined wheel hub assemblies with or without ABS elements incorporate the functionality of tapered roller bearings which he describes as minimizing friction along the direction of allowed relative motion (rotation about the X axis) between the wheel and knuckle. *See* Dr. Awtar’s affidavit at 8. Thus, we have carefully reviewed Dr. Awtar’s affidavit and find that it supports the Department’s conclusion that these features, while adding additional functionality, do not alter the wheel hub assemblies’ essential function of reducing friction.

Comment 5: Whether New Trend’s wheel hub assemblies with additional structures are expressly included in the scope of the Order

- New Trend and PTC argue that its units do not fall within the scope because New Trend’s wheel hub assemblies include an additional flange that is not expressly included in the scope of the Order. PTC argues that the Department incorrectly equates the housed bearing, a component of the wheel hub assembly, with the wheel hub assembly itself and that the scope makes no mention of structures additional to those of bearings and housed bearings as being within the scope of the Order.
- Additionally, Bosda and Kingdom argue that New Trend’s wheel hub assemblies are not housings under the scope because the bearings are not replaceable but permanently machined into them during forging.
- Petitioner rebuts that, as Timken’s expert attested in his second affidavit,¹⁷ the second flange, the one to which a wheel and brake rotors may be attached, is known as a spindle or wheel hub. The scope definition includes tapered roller housings with or without spindles, and so wheel hub assemblies with this additional structure are included in the scope.

Department’s Position: We disagree with New Trend and PTC’s arguments that New Trend’s wheel hub assemblies do not fall within the scope because the scope coverage is limited to TRB housings with a single flange, while New Trend’s assemblies include an additional structure, which serves as a second flange. *See* New Trend’s December 20, 2010, submission at 5. Similarly, we disagree with PTC’s contention that, if the essential function of a “wheel hub unit”

¹⁷ *See* Petitioner’s July 14, 2010, submission at Exhibit 2.

is limited to friction reduction, then a wheel hub unit can include at most the outer flange which houses the TRB and not the remaining structures.

We find that New Trend's and PTC's arguments conflict with the intent and express language of the Order, the ITC Report, and the Petition since none of these impose the limitations on product coverage that PTC and New Trend assert. Again, the ITC Report explicitly identified wheel hub assemblies with their inner and outer flanges (inner and outer races/rings) as one type of TRB that falls under the Order. *See* ITC Report at A-3 and A-7. Additionally, record evidence indicates that wheel hub units with features like New Trend's were subject to the Petition's scope, as stated by Mr. Michael Gromosiak, a Light Vehicle Systems Engineer for Timken, who compared the Petition's wheel hub units to those subject to the Department's instant scope inquiry. *See* Petitioner's May 17, 2010, submission at Attachment 3. For example, one exhibit attached to the Petition identifying covered merchandise "incorporated most of the characteristics of the New Trend wheel hub units, including a flanged spindle, splined inner surface, mounting studs, races machined into the assembly forging, and brake rotor and wheel pilots." *See* Petitioner's May 17, 2010, submission at Attachment 3. *See* also Petition at Attachment 3. New Trend noted and Mr. Gromosiak confirmed that the flanged spindle is the inner race/ring or flange. *See* Petitioner's July 14, 2010, submission at Attachment 2. Therefore, we disagree with PTC and New Trend that the Order does not cover wheel hub units with an additional inner flange.

Additionally, PTC, Bosda and Kingdom argue that the Preliminary Ruling included several material errors related to the product description and related automotive structures that may have affected the Department's scope analysis. First, PTC argues that the Department incorrectly equates integrated wheel hub assemblies with their component bearings and expands the scope of the Order impermissibly by including integrated machine elements of which TRBs are only components. Second, PTC argues that the Department erred in finding that all of New Trend's wheel hub assemblies are included within the Order because some of New Trend's wheel hub assemblies have an inner race that is not machined into the housed bearing (*i.e.*, Generation 2 wheel hub assemblies, where the inner race is provided by a separate ring). Third, Bosda and Kingdom contend that New Trend's wheel hub assemblies are not housings under the scope because the bearings are not replaceable but permanently machined into the assemblies during forging.

While PTC, Bosda and Kingdom argue that the Department incorrectly interpreted the Order to include wheel hub units with additional structural elements and physical characteristics (*i.e.*, an inner race that is not machined into the housed bearing and bearings that are not replaceable but permanently machined into the assemblies during forging), we find that the scope of the Order does not exclude these structural variations, and PTC, Bosda, and Kingdom point to no actual evidence that would suggest that the Order's scope intended to exclude these structural variations of TRB wheel hub assemblies. For instance, PTC does not cite to any language in the Order, ITC Report, or previous scope rulings that exclude wheel hub assemblies with spindles that are not machined into the housed bearing. Accordingly, PTC, Bosda, and Kingdom's arguments conflict with the intent and express language of the Order, ITC Report, and Petition since these did not impose the structural limitations on product coverage as argued by PTC, Bosda, and Kingdom.

Comment 6: Whether New Trend’s wheel hub units with ABS elements are covered under the Order based on a *Diversified Products Analysis*

- New Trend, Bosda, and Kingdom argue that the Department erred in applying the *Diversified Products* criteria to conclude that New Trend’s wheel hub assemblies with ABS elements are included within the Order.¹⁸
- Petitioner argues that the Department properly relied upon a *Diversified Products* analysis to determine that the scope language included wheel hub units with ABS elements.

Department’s Position: We disagree with New Trend’s argument that its wheel hub assemblies with ABS elements are not covered by the Order. According to New Trend, the Department’s underlying error in applying the *Diversified Products* (19 CFR 351.225(k)(2)) factors to conclude that wheel hub assemblies with ABS elements also are included in the Order, was to premise this finding on the erroneous conclusion that non-ABS assemblies are covered in the first place. See New Trend’s December 20, 2010, submission at 10. We disagree. As an initial matter, as discussed above, New Trend’s wheel hub assemblies without ABS elements are included in the Order because they meet the physical description of tapered roller housings with spindles as explicitly stated in the Order. See Comment 1.

PTC also argues that the Preliminary Ruling included material errors related to the automotive structures and product description that may have affected the Department’s *Diversified Products* analysis. See PTC’s December 20, 2010, submission at 9-12. For instance, PTC claims that the Department incorrectly referred to a constant velocity joint shaft (“CV shaft”) as an “axle” and disregarded the fact that the ABS sensor is an electronic device independent of the TRB that adds to the multiple functions of the wheel hub assembly. PTC states that this distinction is material because it illustrates one of several essential functions of New Trend’s wheel hub units that are entirely independent of the TRB and its housing. We disagree with PTC that the Department erred in the Preliminary Ruling and that PTC’s distinctions are material. As an initial matter, the Department has not misused the term “axle.” In the Preliminary Ruling, we applied the term generically to describe the vehicle’s shaft to which the wheel hub unit is mounted, not specifically to the CV shaft. Additionally, with respect to PTC’s argument that the additional functions—torque transmission, braking torque transmission, and ABS functionality—are essential functions that are independent of the TRB and its housing, we have not disregarded this additional functionality. However, we continue to find that while the wheel hub units at issue here contain some additional functionality, they do not replace the original fundamental use of wheel hub units/tapered roller housings covered by the scope of the Order and as described in the ITC Report.

Furthermore, Bosda and Kingdom claim that regarding wheel hub assemblies with ABS elements, the Department does not even claim that these are “housings;” instead, the Department used the *Diversified Products* criteria to expand the scope’s coverage, which is contrary to law.

¹⁸ *Eckstrom Industries Inc. v. United States*, 254 F.3d 1068, 1076 (Fed. Cir. 2001) (“*Eckstrom*”).

See Bosda and Kingdom's December 20, 2010 submission at 5. According to Bosda and Kingdom, the Department is not supposed to proceed to the *Diversified Product* criteria when the terms of the scope are dispositive with respect to the products in question, and cite *Eckstrom*, 254 F.3d at 1076, in support.

We disagree with Bosda and Kingdom that, by relying on the *Diversified Products* criteria to analyze whether wheel hub assemblies with ABS elements are within the scope of the Order, the Department expands the scope's coverage. First, the Department determines that New Trend's wheel hub assemblies without ABS components are tapered roller housings, as expressly listed in the scope of the Order, since these assemblies incorporate two non-removable TRBs that are sealed into a cast, flanged housing, taking the place of the typical TRB cup. The flange houses the TRBs in order to reduce friction. While the Department determines that wheel hub assemblies without ABS elements were covered by clear language of the scope, the Department does not find it as clear with regard to wheel hub assemblies with ABS elements. As a result, the Department proceeds to compare wheel hub units with ABS elements to wheel hub units without ABS elements, as well as to other TRBs and tapered roller housings, applying the *Diversified Products* criteria. This analysis, which remains unchanged from the Preliminary Ruling, is discussed in full in the Preliminary Ruling. See Preliminary Ruling at 9-12. We continue to find that (1) New Trend's wheel hub assemblies with ABS had similar physical characteristics as tapered roller housings; (2) the ultimate purchasers had the same expectations regarding them; (3) their ultimate uses were similar; (4) they were sold in the same channels of trade; and (5) they were advertised and displayed similarly. Thus, we find that the *Diversified Products* criteria, pursuant to 19 CFR 351.225(k)(2), demonstrate that wheel hub assemblies with ABS elements are within scope of the Order.¹⁹

Comment 7: Whether U.S. Customs and Border Protection (“CBP”) rulings are dispositive with regard to coverage of the scope

- Bosda and Kingdom argue that New Trend's wheel hub assemblies with splines and ABS elements are specifically excluded from the Order based on prior CBP rulings.
- Petitioner rebuts that contrary to Bosda and Kingdom's assertions, CBP rulings are inapplicable.

Department's Position: Bosda and Kingdom argue that wheel hub units with splines and ABS sensors are specifically excluded from the Order because they are not housed bearings. See Bosda and Kingdom December 20, 2010, submission at 3-5. As evidence, Bosda and Kingdom cite to CBP rulings that classify wheel hub assemblies containing flanged spindles that are splined and ABS sensors as complete, finished auto parts under Harmonized Tariff System (“HTS”) 8708 (“parts and accessories of motor vehicles of headings 8701 to 8705”). See *id.* Bosda and Kingdom claim that because CBP treats these latter wheel hub units as motor vehicle parts rather than housed bearings, the Department should do the same.

¹⁹ We note that while PTC, Bosda, and Kingdom have challenged various aspects of the Department's Preliminary Ruling, none of the interested parties alleged that the Department erred in the analysis made with respect to any of the criteria under 19 CFR 351.225(k)(2).

We do not agree. As an initial matter, we agree with Petitioner that CBP tariff classification rulings are not determinative of the issue of which products are covered by an antidumping duty order. For example, although a CBP ruling may classify a product under the HTSUS item number identified in the scope of the Order, the CBP ruling does not determine that the product is covered by an antidumping or countervailing duty petition, investigation, or Order because the HTSUS item numbers do not define the scope, rather the scope's written description is dispositive of its coverage and such descriptions may cover all or only a portion of merchandise included within a specific tariff classification. Classification under the antidumping law and CBP classification law are not required to match because the CBP valuation statute and the antidumping statute are substantially different in both purpose and operation. *See Smith Corona Corp. v. United States*, 915 F.2d 683, 685 (Fed. Cir. 1990) ("*Smith Corona*"). Thus, the Department's rulings under the antidumping law may properly result in the creation of classes that do not correspond to classifications found in the tariff schedule or may define or modify a known classification in a manner not contemplated or desired by CBP. *See Smith Corona*, 915 F.2d at 686. Additionally, the court has consistently held that CBP tariff rulings do not govern antidumping determinations with respect to class or kind. *See, e.g., FAG Kugelfischer Beog Schafer KGaA v. United States*, 932 F. Supp. 315, 320 (CIT 1996). In fact, "{i}t is the responsibility of {the Department} to interpret the term class or kind in such a way as to comply with the mandates of the antidumping laws, not the classification statutes." *Torrington Co. v. United States*, 745 F. Supp. 718, 722 (1990). Thus while CBP rulings may be instructive in some cases, they are not binding on the Department's scope determinations and in this case, as discussed in detail in the Preliminary Ruling, we did not find them instructive. Accordingly, the Department finds Bosda and Kingdom's reliance on CBP rulings unpersuasive.

RECOMMENDATION:


Based on the above analysis, we recommend that the Department continue to find New Trend's splined and non-splined wheel hub assemblies without ABS elements are within the scope of Order on TRBs from the PRC because they meet the description of merchandise included in the scope of the Order, Petition, and the ITC Report. Additionally, we recommend that the Department continue to find that, based on the *Diversified Products* criteria under 19 CFR 351.225(k)(2), New Trend's splined and non-splined wheel hub assemblies with ABS elements are within the scope because 1) New Trend's wheel hub assemblies with ABS elements have similar physical characteristics as products covered by the Order; 2) the expectations of ultimate purchasers of New Trend's wheel hub assemblies with ABS elements share the same expectations of ultimate purchasers of products covered by the Order; 3) the ultimate use of New Trend's wheel hub assemblies with ABS elements is similar to the ultimate use of products covered by the Order; 4) New Trend's wheel hub assemblies with ABS elements are sold in the same channels of trade as products covered under the Order; and 5) New Trend's wheel hub assemblies with ABS elements are advertised and displayed similarly to products covered by the Order.

If you agree, we will notify CBP of our final ruling and instruct CBP to continue to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each

same channels of trade as products covered under the Order; and 5) New Trend's wheel hub assemblies with ABS elements are advertised and displayed similarly to products covered by the Order.

If you agree, we will notify CBP of our final ruling and instruct CBP to continue 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(I). 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



Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

4/18/11

Date



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

A-570-601
Scope Inquiry
IA / Office 8: TT
Public Document

April 18, 2011

RE: Tapered Roller Bearings from the People's Republic of China (A-570-601): Final Scope Ruling on New Trend's Wheel Hub Assemblies

To All Interested Parties:

On March 5, 2010, the Department of Commerce ("Department") received a request from New Trend Engineering Ltd. ("New Trend") for a scope ruling to determine whether certain 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").

On April 18, 2011, the Department issued a final scope ruling that New Trend's splined or non-splined wheel hub assemblies without antilock braking system ("ABS") elements and New Trend's wheel hub assemblies with ABS technology are within the scope of Order on TRBs from the PRC.

Enclosed is the memorandum of the Department's final ruling in the above-referenced scope inquiry. If you have any questions, please contact Erin Begnal at 202-482-1442 or Trisha Tran at 202-482-4852.

Sincerely,

Wendy J. Frankel
Director, Office 8
Antidumping and Countervailing Duty Operations
Import Administration

Enclosure

