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Scope Inquiry
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MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Wendy J. Frankel
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Antidumping and Countervailing Duty Operations

Erin Begnal
Program Manager, Office 8
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FROM: Lindsey Novom
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Antidumping and Countervailing Duty Operations

RE: Tapered Roller Bearings from the People's Republic of China-
Final Scope Determination on Bosda's Wheel Hub Assemblies

SUMMARY

On October 28, 2010, the Department of Commerce ("Department") received a request from Bosda International (USA) LLC ("Bosda"), a U.S. importer, for a scope inquiry to determine whether its wheel hub assemblies incorporating tapered roller bearings ("TRBs") are outside the scope of the antidumping order on TRBs from the People's Republic of China ("PRC").¹ No interested party commented on Bosda's request. In accordance with 19 CFR 351.225(d) and 351.225(k)(1), we recommend that the Department determine that the wheel hub assemblies imported by Bosda that are the subject of this inquiry,² are within the scope of the antidumping duty order on tapered roller bearings from the PRC.

¹ 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").

² See "Tapered Roller Bearings from the People's Republic of China: Scope Inquiry," dated Oct. 28, 2010 ("Bosda's Request").



BACKGROUND

On October 28, 2010, Bosda submitted a request seeking a determination on whether its wheel hub assemblies are outside the scope of the *Order*.³ Pursuant to the requirements of 19 CFR 351.225(c), Bosda provided a description of its wheel hub assemblies and an explanation of why it believed they were outside the scope of the *Order*. No interested party filed comments regarding Bosda's Request. In response to Bosda's October 28, 2010 scope inquiry, the Department extended the deadline for issuing our scope ruling until January 26, 2011. On January 24, 2011, we extended the deadline for issuing our scope ruling by 45 days until March 14, 2011. On March 4, 2011, we extended the deadline for issuing our scope ruling by 45 days until April 28, 2011. On April 27, 2011, we extended the deadline for issuing our scope ruling by 33 days until May 31, 2011. On May 31, 2011, we extended the deadline for issuing our scope ruling by 14 days, until June 14, 2011.

Citing to the scope language of the *Order*, Bosda argues that its wheel hub assemblies should be excluded from the *Order*. In addition, Bosda argues that its wheel hub assemblies are identical to the wheel hub assemblies covered in the scope proceeding involving wheel hub assemblies imported by New Trend Engineering Ltd. ("New Trend"), initiated by the Department on June 15, 2010. On December 8, 2010, the Department preliminarily found that New Trend's splined and non-splined wheel hub assemblies, with and without antilock braking system ("ABS") elements, are within the scope of the *Order* ("New Trend Preliminary Ruling"). On April 18, 2011, the Department made a final ruling that New Trend's splined and non-splined wheel hub assemblies, with and without ABS elements, are within the scope of the *Order*.⁴

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 follows:⁵

Imports covered by the 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 6 and

³ *Id.* at 1-2.

⁴ Tapered Roller Bearings from the People's Republic of China: Final Scope Ruling on New Trend Engineering Ltd.'s Wheel Hub Assemblies, dated April 18, 2011 ("New Trend Final Ruling").

⁵ The Department notes that the scope in the 1987 Order reflects different tariff 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 tariff classification language of the Order was revised to reflect the new HTSUS schedule.

⁶ 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

8708.99.80.80.7 Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

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 International Trade Commission ("ITC"). See 19 CFR 351.225(d) and 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(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 Department's 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.

For this proceeding, the Department evaluated Bosda's request in accordance with 19 CFR 351.225(k)(1) and finds that the description of the merchandise contained in the scope of the order, the petition, the initial investigation, the determinations by the Secretary (including prior scope determinations) and the ITC are dispositive with respect to Bosda's wheel hub assemblies, with and without ABS elements. Therefore, we find it unnecessary to consider the additional factors found in 19 CFR 351.225(k)(2).

INTERESTED PARTY COMMENTS

Bosda states that "the wheel hub assemblies covered by this scope inquiry are for all intents and purposes identical to those of New Trend."⁹ Bosda's wheel hub assemblies are "essentially identical"¹⁰ to New Trend's assemblies based on the following criteria:

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

⁷ Effective January 1, 2007, the HTSUS subheading 8708.99.8080 is renumbered as 8708.99.8180; see *id.*

⁸ See *Diversified Products*, 572 F. Supp. 883 (CIT 1983) ("*Diversified Products*").

⁹ See Bosda's Request at 2.

¹⁰ *Id.*

- Based on the comparison of the BCA item codes (a standard coding system used in the industry), New Trend and Bosda's models are identical because the BCA codes are the same.
- Both companies' wheel hub assemblies are used with the front wheels of automobiles, incorporate two permanently installed tapered roller bearings in an inner race and cup that is machined into the unit's flange, an outer race machined into the assembly forging, and wheel mounting face and studs for attachment of the assembly to an automobile.
- Like New Trend, the vast majority of Bosda's assemblies feature a flanged outer hub into which has been pressed a flanged spindle having mounting studs and a splined inner surface.
- Bosda's splined wheel hub assemblies are identical to New Trend's splined assemblies.¹¹
- The vast majority of Bosda's assemblies also incorporate anti-lock braking system capability.
- All of Bosda's wheel hub assemblies incorporate brake pilots.

Bosda argues the following as to why the scope of the antidumping duty order does not include wheel hub assemblies:

- The *Order* is limited to certain bearings, bearing parts, flange units, take up units, cartridge units, hanger units and tapered roller housings containing tapered rollers. Wheel hub assemblies are not identified in the scope of the *Order*, and therefore the Department cannot find that they are included within the scope of the *Order*.¹²
- Wheel hub assemblies embody elements that enable the performance of several important functions far exceeding the limited functions of their imbedded bearings (*e.g.*, motion reduction, load bearing and friction reduction).
- Contrary to The Timken Company's ("Petitioner") assertion in the New Trend scope inquiry,¹³ wheel hub assemblies are not cartridge units (as covered by the scope of the *Order*) because they include additional features, such as brake and wheel pilots, wheel mounting face and studs, flanged spindle, axle-attaching flange, brake sensors, and a splined inner surface. Bosda disagrees with Petitioner's argument in the New Trend scope inquiry that the Petition¹⁴ contemplated the inclusion of wheel hub assemblies in the scope of the *Order*. Bosda argues that the Petition referred to cartridge units, not wheel hub assemblies.
- Contrary to Petitioner's argument in the New Trend scope inquiry, Bosda argues that the ITC Report¹⁵ does not include wheel hub assemblies. Bosda argues that the ITC

¹¹ See Bosda's Request at Exhibit 1.

¹² *Id.* at 5-6, citing *Duferco Steel, Inc. v. United States*, 296 F.3d 1087 (Fed. Cir. 2002) ("*Duferco Steel*").

¹³ See Bosda's Request at 4-9, responding to Petitioner's arguments in Petitioner's submissions made on the record of the New Trend scope inquiry. Petitioner did not comment on Bosda's Request.

¹⁴ 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").

¹⁵ 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").

Report refers only to the “bearing unit component of wheel hub assemblies” which do not include the additional features of wheel hub assemblies.¹⁶

- Bosda argues that wheel hub assemblies are not tapered roller housings covered by the scope of the *Order* because wheel hub assemblies provide additional capabilities crucial to a vehicle’s operation, including drive torque transmission, braking torque transmission, and ABS functionality.
- Bosda argues that wheel hub assemblies are sealed in a separate flanged casting, which serves as a housing for the wheel hub assemblies, and so the wheel hub unit itself is not a housing.¹⁷
- Bosda argues that the language in the scope of the *Order* concerning “tapered roller housings... incorporating tapered rollers” was intended to apply to products classifiable under tariff provisions for housed bearings, not wheel hub assemblies.¹⁸
- Citing to rulings by U.S. Customs and Border Protection (“CBP”), Bosda argues that CBP considers wheel hub assemblies to be complete, finished auto parts because their functionality exceeds their constituent antifriction devices.¹⁹

Record Evidence

The Department finds that record evidence, which includes Bosda’s Request, accompanying exhibit and the New Trend Ruling, demonstrates that the wheel hub assemblies described by Bosda are identical to New Trend’s wheel hub assemblies for the following reasons:

1. Although there are several different types²⁰ 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, and an outer race machined into the assembly forging, which are identical to certain of New Trend’s wheel hub assemblies.
2. Both companies’ assemblies incorporate wheel and brake pilots for aligning the wheels and brake rotors, and mounting wheel studs.
3. The majority of the assemblies consist of a flanged outer hub with two TRBs, into which has been pressed a flanged spindle with a splined inner surface and mounting studs, identical to New Trend’s.
4. Certain of the products do not have a splined spindle and certain of the products include ABS capability, identical to New Trend’s. Bosda’s wheel hub assemblies, like those of New Trend, 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

¹⁶ Bosda’s Request at 6.

¹⁷ *Id.* at 7. Bosda refers to a submission placed on the record of the New Trend scope inquiry by Power Train Components. This submission is not on the record of this scope inquiry.

¹⁸ *Id.* at 7-8.

¹⁹ See Customs Rulings NY 818084 (Feb. 7, 1996), approvingly cited by Customs Headquarters in HQ W968364 (Jan. 8, 2007); Customs Rulings HQ 088762 (Dec. 12, 1991); NY N007176 (March 1, 2007); NY N007898 (March 5, 2007); and NY N007897 (March 14, 2007).

²⁰ See Bosda’s Request at Exhibit 1.

elements.²¹

Additionally, both companies' wheel hub assemblies are used for the same purpose with the front wheels of an automobile.

ANALYSIS

Category 1: Bosda's Splined and Non-Splined Wheel Hub Assemblies without ABS Elements

Order

With respect to Bosda's wheel hub assemblies without ABS elements, we find that Bosda's wheel hub units without ABS elements meet the physical description of subject merchandise as explicitly stated in the *Order*. The scope of the *Order* states that covered merchandise includes "tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use." Bosda's wheel hub assemblies without ABS elements are housed tapered roller bearings in that the inner race/cup of the TRBs are machined into a flange, *i.e.*, housed in a flange.²² According to Bosda, the majority of the assemblies consist of a flanged outer hub, into which has been pressed a spindle having a splined inner surface. *See id.* Thus, because Bosda's wheel hub assemblies without ABS elements are essentially tapered roller housings with spindles, we find that they are covered by the scope of the *Order*.

ITC Report

The Department finds that the ITC Report explicitly identifies that wheel hub units fall under the category of "self-contained taper roller bearing packages." *See* ITC Report at A-6. The ITC Report describes "wheel hub units" as:

{S}elf-contained roller bearing packages include cartridge bearing units and wheel hub units.... 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. The useful life of both of these types of bearing units is the life of the automobile, and *the next generation of the self-contained units will have flanged inner and outer rings as part of the assembly. This will allow it to take over the functions of other, usually separate, components in the wheel hub system.*

See ITC Report at A-6 to A-7 (*emphasis added*).

Although the wheel hub units described in the ITC Report do not expressly include a brake or wheel pilot, the ITC Report explains that the next generation of wheel hub units will have flanged inner and outer rings as part of the assembly to allow it to "take over the functions of

²¹ Bosda's Request at 2-3.

²² *Id.* at 3.

other, usually separate, components in the wheel hub system.”²³ Bosda’s wheel hub assemblies, which incorporate a flange with a wheel pilot and a brake pilot, clearly fit the description of the next generation of wheel hub units with flanged inner and outer rings containing components to take over additional, previously separate functions (*i.e.*, to align the brake rotors and wheels, respectively).

Petition

The Petition expressly stated that it covered *all* types of TRBs, including self contained bearing packages, sometimes referred to as “unitized” bearings. *See* Petition at 9-10. The Petition explained that these self-contained bearing packages are generally pre-set, presealed, and pregreased. *See* Petition at 7.

The Petition covered all types of TRBs, including “self-contained bearing packages.” 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, to include the type of wheel hub units imported by Bosda without ABS elements.

Prior Scope Rulings

Next, we reviewed a prior scope ruling of the Department. On April 18, 2011, the Department issued the New Trend Final Ruling, in which we determined that New Trend’s wheel hub assemblies, with and without ABS elements, are within the scope of the *Order*. Specifically, we found that New Trend’s wheel hub units without ABS elements met the description of merchandise (*i.e.* tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use) included in the scope of the *Order*, Petition, and the ITC Report.²⁴

For the above reasons, we find that Bosda’s wheel hub assemblies without ABS elements are covered by the scope of the *Order*.

Category 2: Bosda’s Wheel Hub Assemblies with ABS Elements

Prior Scope Rulings

With respect to Bosda’s wheel hub units with ABS elements, in the New Trend Ruling, the Department found that New Trend’s wheel hub assemblies with ABS elements were within the

²³ *See* ITC Report at A-7.

²⁴ New Trend Final Ruling at 1.

scope of the *Order*. However, the Department found that its analysis of the scope of the *Order* under 19 CFR 351.225(k)(1) was not dispositive. Thus, pursuant to 19 CFR 351.225(k)(2), the Department considered the *Diversified Products* criteria to determine whether New Trend's wheel hub assemblies with ABS elements are within the scope of the *Order*. There, the Department found the following with respect to New Trend's wheel hub assemblies with ABS elements: (1) wheel hub assemblies with ABS elements have similar physical characteristics as products covered by the *Order*; (2) the ultimate purchasers of wheel hub assemblies with ABS elements share the same expectations of ultimate purchasers of products covered by the *Order*; (3) the ultimate use of wheel hub assemblies with ABS elements is similar to the ultimate use of products covered by the *Order*; (4) wheel hub assemblies with ABS elements are sold in the same channels of trade as products covered under the *Order*; and (5) wheel hub assemblies with ABS elements are advertised and displayed similarly to products covered by the *Order*.

In this case, as discussed above, Bosda's wheel hub assemblies with ABS elements are identical to New Trend's wheel hub assemblies with ABS elements which were the subject of the New Trend Ruling. Under 19 CFR 351.225(k)(1), the Department first looks to see whether the scope of the *Order*, as interpreted with the aid of the descriptions of the merchandise in the petition, the investigation, prior scope rulings and the ITC report, is dispositive as to whether the merchandise is within the scope. Because Bosda's wheel hub assemblies with ABS elements are identical to those of New Trend, and because we determined in a prior scope ruling that these wheel hub assemblies are within the scope of the *Order*, we find that our analysis under 19 CFR 351.225(k)(1) with respect to this scope inquiry is dispositive. Therefore, we find that Bosda's wheel hub assemblies with ABS elements are covered by the scope of the *Order*.

Response to Bosda's Arguments

We disagree with Bosda that the scope of the *Order* does not include wheel hub assemblies because they are not expressly mentioned in the *Order*, and because its wheel hub assemblies provide additional capabilities. The *Order* does not include a limitation on the types of functions that tapered roller housings may possess. In addition, the scope of an antidumping duty order does not need to identify every variation of the article that is subject to the scope. In *Duferco Steel*, the Court of Appeals for the Federal Circuit held that “scope 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*, 296 F.3d at 1089 (emphasis added). While the scope does not explicitly list “wheel hub assemblies,” we have determined, based on the record of the underlying proceeding, that tapered roller housings with spindles, whether splined or non-splined, are covered by the scope of the *Order*.

In response to Bosda's arguments that its wheel hub assemblies, which possess additional functions and features, are not subject to the *Order*, as noted above in the “Record Evidence” section, Bosda's wheel hub units are identical to those that the Department found to be covered by the scope of the *Order* in the New Trend Final Ruling. In the New Trend Final Ruling, the Department addressed New Trend's arguments, and the arguments of interested parties, including those of Bosda, that wheel hub units with additional functions and features were not a type of product covered by the *Order*. We found that New Trend's wheel hub assemblies are included within the *Order* because the *Order* does not include a limitation on the types of

functions that tapered roller housings may possess. As we stated in the New Trend Final Ruling, the ITC Report and Petition confirm that wheel hub assemblies with additional functions were covered by the proceeding. 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* New Trend Final Ruling at 10. 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 id.* Similarly, the Petition supported 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 id.* Accordingly, in the New Trend Final Ruling, we found that the ITC Report and Petition confirm that wheel hub units with flanged inner and outer rings/races and additional functionalities are within the scope of the proceeding and subsequent *Order*.

Bosda also asserts that its wheel hub assemblies are not bearing housings for the following reasons: (1) wheel hub assemblies provide additional capabilities crucial to a vehicle's operation, including drive torque transmission, braking torque transmission, and ABS functionality; (2) the functionality of assemblies exceed the protection and support functions associated with "housing;" (3) bearings are not replaceable but permanently machined into the wheel hub assembly during forging; and (4) "the TRBs are sealed in a separate flanged casting, which serves as the housing for the wheel hub units."²⁵

The Department finds that, consistent with our findings in the New Trend Final Ruling, Bosda's wheel hub assemblies are properly classified as tapered roller housings incorporating tapered rollers, with or without spindles, whether or not for automotive use because 1) Bosda's wheel hub assemblies incorporate two permanently installed tapered roller bearings in an inner race and cup that are machined into the unit's flange (*i.e.*, housed in a flange), and 2) Bosda's wheel hub assemblies feature a flanged outer hub into which has been pressed a flanged spindle having mounting studs and a splined inner surface (*i.e.*, with a spindle). We find that the fact that the bearings are not replaceable is not relevant to whether the wheel hub assembly is properly considered a "tapered roller housing" under the scope because there is nothing in the language of the scope that specifies that the TRB has to be replaceable.

The Department also disagrees with Bosda's 1) characterization of wheel hub units and 2) assertion that wheel hub assemblies do not constitute tapered roller housings because the "assemblies" are structures that incorporate wheel hub units and impart additional capabilities crucial to a vehicle's operations. The Department finds that Bosda's assertion that "the wheel hub unit itself is not {a} housing" is inaccurate pursuant to the description provided by the ITC Report. Based on the ITC Report's description, wheel hub units are defined as "prelubricated, preset, double-row tapered roller bearings that have been sealed; ...into a cast, flanged *housing* with bolt holes for direct mounting onto the wheel hub." In short, the Department interprets the ITC Report description to mean that wheel hub units are indeed tapered roller housings.

²⁵ Bosda's Request at 7.

Furthermore, based on the Department's interpretation of the "next generation" language of the ITC Report, the Department finds that the additional capabilities identified by Bosda are aspects of the housing that have assumed "the function of other, usually separate, components in the wheel hub system" (see ITC Report at A-7), but have not replaced the primary properties and function of the TRB, which is to "permit free motion between moving and fixed parts by holding or guiding the moving parts to minimize friction and wear." See ITC Report at A-3. Therefore, the Department finds that both wheel hub units and the "next generation" wheel hub assemblies (as so identified by Bosda) constitute tapered roller housings.

Additionally, as discussed above, we disagree with Bosda's arguments that a wheel hub assembly's additional features and functionality precludes it from being subject to the *Order*, because the essential function of the TRB remains, regardless of these additional elements. Wheel hub units with additional features and functions retain the essential function of TRBs covered by the *Order*; that is, they continue to reduce friction. In addition, the additional features found on wheel hub units are engineering and design variations which do not alter the fundamental nature of the subject TRB. Machining bearings into the flange of the housing is a design attribute of the wheel hub unit that promotes simplicity by minimizing the number of parts and potentially reducing the overall weight of the product. A wheel hub unit retains its essential function of reducing friction regardless of whether the bearing races have been machined or pressed into the housing. Similarly, with respect to the brake and wheel pilots, we find they are auxiliary elements and the essential function of these wheel hub units is still to house TRBs that reduce friction. The brake and wheel pilots are simply extrusions from the surface of the wheel hub spindle that facilitate the alignment of the wheel and brake rotor to the spindle and make it easier to attach the wheel and brake rotors. Their inclusion does not alter the essential function—the reduction of friction—of the wheel hub unit.²⁶

We also disagree with Bosda's argument that because CBP treats wheel hub assemblies as finished auto parts, rather than antifriction devices and Bosda's assertion that wheel hub assemblies are not housed bearings because CBP has ruled that wheel hub assemblies are not classified under the HTS categories for housed bearings that wheel hub units are not subject to the *Order*. CBP tariff classification rulings do not determine whether a particular product is covered by an antidumping or countervailing duty petition, investigation, or order, as HTSUS 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. Coverage under a particular order pursuant to the antidumping and countervailing duty law and CBP tariff 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 of merchandise that do not directly correspond to classifications found in the tariff schedule. 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, "it 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


²⁶ New Trend Preliminary Ruling at 7-8.

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, we did not find them instructive. Accordingly, the Department finds Bosda’s reliance on the CBP rulings identified above unpersuasive.

RECOMMENDATION

Pursuant to 19 CFR 351.225(k)(1), we recommend finding that Bosda’s wheel hub assemblies are within the scope of the *Order* because Bosda’s wheel hub assemblies meet the description of wheel hub units and tapered roller housings included in the scope of the Petition, the ITC Report, and the *Order*. Moreover, this is consistent with a prior Department scope ruling (*i.e.* New Trend Final Ruling), addressing products identical in nature to Bosda’s.

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

6/14/11

Date