



**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**

Washington, D.C. 20230

A-570-803

Scope Inquiry

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MEMORANDUM TO: Holly A. Kuga  
Acting Deputy Assistant Secretary, Group II  
Import Administration

FROM: *F* Thomas Futtner *MJM*  
Acting Office Director,  
Office of AD/CVD Enforcement IV

RE: Antidumping Duty Order on Picks and Mattocks from the People's  
Republic of China

SUBJECT: Final Scope Ruling - Request by Tianjin Machinery Import &  
Export Corporation for a Ruling on Cast Picks.

**SUMMARY**

On April 25, 2003, Tianjin Machinery Import & Export Corporation (TMC) requested that the Department of Commerce (the Department) issue a scope ruling as to whether the cast picks it exports to the United States are within the scope of the antidumping duty (AD) order on picks and mattocks from the People's Republic of China (PRC). Picks and mattocks constitute one of the four classes or kinds of subject merchandise covered by the antidumping orders on Heavy Forged Hand Tools (HFHTs) from the PRC. See Antidumping Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China, 56 FR 6622 (February 19, 1991) (HFHTs Orders).

In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that TMC's cast picks are included within the scope of the AD order on picks/mattocks from the PRC.



## BACKGROUND

On April 25, 2003, TMC requested that the Department conduct a scope inquiry, pursuant to 19 CFR 351.225(c), as to whether the cast picks it exports to the United States are within the scope of the AD order on picks/mattocks. The Department initiated a formal scope inquiry on May 22, 2003, pursuant to section 351.225(e) of the Department's regulations, and requested comments from all interested parties. TMC and Ames True Temper (Ames), the petitioner in this proceeding, submitted comments on June 12, 2003 and June 13, 2003, respectively. TMC submitted rebuttal comments on June 23, 2003. We received no rebuttal comments from the petitioner. On August 5, 2003, the Department placed two items on the record of this scope inquiry: (1) page A-3 of Heavy Forged Hand Tools from the People's Republic of China, Determination of Injury, USITC Publication 2357, February 1991 (ITC Final Report), and (2) the scope ruling on skinning axes, dated March 8, 2001. TMC commented on these items in its August 8, 2003 submission. The petitioner provided no rebuttal.

## ARGUMENT

In its April 25, 2003 request for a scope ruling, TMC describes the tool subject to this request as a cast pick in various styles, differing principally in the weight of the head, the angle and size of the prongs, and the shape of the pick points. According to TMC, cast picks are used for digging and are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 8201.30.00. TMC states that its position that cast picks are outside the scope of the order is based upon descriptions found in the petition for this proceeding, prior determinations by the Department and the ITC, and what TMC terms a "prior scope determination" concerning cast picks.

TMC first contends that the petition, the Department's less-than-fair-value (LTFV) investigation, and the ITC's final material injury report all identified "forged" hand tools as the subject merchandise, not "cast" hand tools. See Antidumping Petition of Woodings-Verona Tool Works, Inc., "Heavy Forged Hand Tools, With or Without Handles, From the People's Republic of China," dated April 4, 1990 (the Petition); HFHTs Orders; and ITC Final Report. Specifically, TMC makes the following arguments: (1) the petition states that the "U.S. heavy forged hand tools industry" is being materially injured; (2) the petitioner requested that the Department and the ITC initiate an investigation of "heavy forged hand tools"; (3) the Department determined in the investigation that "heavy forged hand tools" are being, or are likely to be sold in the United States at less-than-fair-value; (4) the Department stated in the scope section of the LTFV investigation that "heavy forged hand tools" are "manufactured through a hot forge operation"; (5) the petition and the ITC Final Report define the hot forge process in a manner that excludes casting; and (6) the ITC made its determination of material injury for imports of "heavy forged hand tools." TMC concludes from these excerpts that there is no ambiguity that the petition, the Department's LTFV investigation, and the ITC Final Report make it clear that the scope of the order is limited to "forged" hand tools.

TMC next argues in its April 25, 2003 submission that the petition and the ITC Final Report identified “forging” as the critical production process that imparts unique characteristics to forged hand tools. TMC explains that forging and casting are two different production processes. The petition and the ITC Final Report both describe the forging process as a process where steel, pre-cut to a specified length, is heated to a forging temperature and then formed to final shape using presses, dies, drop hammers, or other forging equipment. In contrast, TMC asserts that casting is where steel or other metal is heated to a molten state and then poured into a mold and hardened. Moreover, steel retains its initial physical properties in the forging process while the physical properties of the raw material are changed in the casting process. In sum, TMC concludes that the forging and casting production processes are different and mutually exclusive.

TMC also argues that the Department made a “scope determination” in the 1992-1993 administrative review that cast picks are excluded from scope of the order on picks and mattocks. On November 10, 1994, Shandong Machinery Import & Export Corporation (SMC) requested that the Department disregard in its calculations one sale of “casting steel pick heads” that SMC reported to the Department but believed to be out of the scope of the pick/mattock order. TMC observes that the Department, in the Memorandum from Karin Price to the File dated January 3, 1995, decided to exclude this sale from the Department’s analysis because the product was a cast pick. Furthermore, TMC notes that the Department followed this decision in the preliminary results of the 1992-1993 administrative review when the Department mentioned this exclusion in the April 12, 1995 preliminary results analysis memorandum. Lastly, TMC argues that this exclusion was important because it occurred within only a few years after the LTFV investigation when the issues from the investigation were still fresh.

TMC continues by stating that the final scope ruling concerning Pulaski Tools, dated March 8, 2001, is not relevant to cast picks because the issue in the Pulaski Tools scope ruling was whether a hand tool that was forged without using dies could still be considered within the scope of the orders on HFHTs, even though the scope of the order mentions the use of dies in the forging process. See Memorandum from Thomas Futtner, Acting Office Director, to Holly Kuga, Acting Deputy Assistant Secretary, “Final Scope Ruling--Antidumping Duty Orders on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People’s Republic of China - Request by Tianjin Machinery I/E Corp. for a Ruling on Pulaski Tools,” dated March 8, 2001 (Pulaski Tools). TMC contends that the Department emphasized in the Pulaski Tools scope ruling that the forging process itself was what was at issue, and not the use of dies. TMC concludes that because the picks currently in question are cast, while the Pulaski Tool was forged, this prior scope ruling is not relevant.

Lastly, TMC states in its April 25, 2003 submission that the Court of Appeals for the Federal Circuit (CAFC) in Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1094-95 (Fed. Cir. 2002) (Duferco Steel, Inc.), ruled that the Department may not “interpret” an antidumping order to change the scope, unless the scope contains language that specifically includes, or may be reasonably interpreted to include, the subject merchandise. Since the scope of the

picks/mattocks order specifically includes forged tools and not cast tools, TMC claims that the scope cannot be reasonably interpreted to include cast picks.

In its June 12, 2003 comments, TMC argues that the Department should not confuse “like products” included by the ITC in its injury analysis with hand tools that are within the scope of the order. TMC notes that in a remand from the Court of International Trade (CIT), the ITC noted that it might include articles as domestic like products “in addition to” those described in the scope of the investigation. TMC argues that the Department should not confuse cast picks, which may or may not have been considered “like products” by the ITC, with forged hand tools that are within the scope of the order.

The petitioner states in its June 13, 2003 comments that cast picks are within the scope of the order on picks and mattocks since the petitioner specified that the scope of the hand tools orders is described by the four tariff subheadings in the HTSUS identified in the petition. The petitioner argues that nowhere in the petition, or in the order, is there any reference to a requirement that subject merchandise be forged or produced by a particular production process. The petitioner states that it submitted a letter dated April 17, 1990 to the Department and the ITC that reiterated that the scope of the petition covers all imports under the four identified HTSUS subheadings, unless the product was specifically excluded. The petitioner argues that since (1) cast picks are classified under HTSUS number 8201.30.00, (2) HTSUS number 8201.30.00 was included as a heading of merchandise covered by the scope of the petition, the investigation and subsequent orders, and (3) it has never specifically requested that cast picks be excluded from the order, then cast picks are covered by the order on picks and mattocks.

The petitioner continues, stating that, pursuant to section 351.225(k)(1) of the Department’s regulations, and Torrington Co. v. United States, 786 F. Supp. 1021, 1026 (1992), the Department must first look to the underlying petition to determine which products are within the scope. If the descriptions are dispositive, the Department must issue the scope ruling based upon the petition alone. However, if the petition is ambiguous, the petitioner states that the Department may examine its final determination at the investigation and the ITC’s determinations. The petitioner states that, in this instance, the petition is unambiguous since the scope section within the petition does not specifically exclude cast picks.

The petitioner also argues that the Department does not consider the process by which a particular product is manufactured to be determinative of scope. Instead, the Department looks to the physical characteristics of the product to evaluate whether the product is covered by the scope of the order. In this instance, states the petitioner, the physical description for this order does not contain any parameters other than the common name for the tool itself, picks and mattocks. Therefore, the petitioner concludes that any item called a pick is covered by the order. Regarding TMC’s emphasis on the fact that the petition repeatedly uses the term “heavy forged hand tools,” the petitioner notes that the name of the investigation does not convey the coverage of the order’s scope. Moreover, the petitioner argues that forging is only a general description of the manufacturing process, and the process most often used. The petitioner notes that the

petition stated “{t}he manufacturing process is *generally described* as a hot forge operation” (emphasis added by petitioner). See the Petition at 2. The petitioner claims that this language confirms that the petitioner recognized that processes other than forging existed. If the petition meant to exclude cast picks, the petitioner asserts that it would have stated so. Furthermore, the petitioner notes that the ITC Final Report agreed with this conclusion when it stated “the method *used most often* in the production of subject products is forging” (emphasis added by petitioner). The petitioner states that the Department agreed with this position in its Pulaski Tools scope ruling.

The petitioner next argues that the Department should give no deference to the January 3, 1995 Memorandum from Karin Price to the File. According to the petitioner, this memorandum is a one-page document that does not adequately assess or consider the scope of the order, or announce any type of scope exclusion through the Federal Register. The petitioner urges the Department to rely upon the more complete analysis contained in the Pulaski Tools scope ruling, which found that production process does not limit the order’s scope.

The petitioner continues, stating that under the five-factor test under Diversified Products Corp. v. United States, 572 F. Supp. 883 (CIT 1983) (Diversified Products) and section 351.225(k)(2) of the Department’s regulations, cast picks are in no way different from forged picks. The petitioner notes that cast and forged picks are both made of steel or other ferrous metal, have handles, and are produced with tapered heads for digging. The petitioner adds that customers expect the same thing from all picks regardless of how they are produced, that the pick be able to dig, loosen soil, etc. Customers purchase picks based upon these characteristics, not the manufacturing process used. Furthermore, the petitioner asserts that all picks are sold through the same channels of trade and are advertised together in sales literature. The petitioner concludes that to exclude cast picks from the scope of the order would invite circumvention, as exporters would switch production away from forged products, or simply claim that products are not forged, increasing the enforcement burden on U.S. Bureau of Customs and Border Protection (BCBP).

In its June 23, 2003 rebuttal, TMC states that the petition, the Department’s LTFV investigation, and the ITC’s final injury report all stated that the subject merchandise are HFHTs. Regarding the petition, TMC makes the following seven arguments. First, TMC notes that the petition contained brochures from several Chinese hand tool companies that the petitioner characterized as illustrating “forged striking, digging, hewing and bar tools...” (Emphasis added by TMC). Second, TMC states that the petitioner described the subject merchandise in every reference in the petition as “forged,” including in the case caption. Furthermore, the petitioner never mixed casting and forging, which are separate and distinct manufacturing processes. Third, TMC argues that although the petitioner’s April 17, 1990 letter to the Department and ITC does emphasize that the scope should include all merchandise classifiable under the listed HTSUS subheadings unless specifically excluded, the petitioner’s intent, as indicated by BCBP rulings attached as exhibits to the petition, was to ensure that semifinished forged tool heads were within the scope. In this 1990 letter, the petitioner states “...heads of sledgehammers and

other heavy forged hand tools that require heat treatment and finishing after entry into the United States are within the scope of this investigation.” TMC observes that, according to this statement, covered products are forged and subject to heat treatment. Cast products cannot be heat treated. Fourth, TMC argues that the petition describes the PRC industry that produces subject merchandise as the “forging sector” and describes the domestic industry’s business as a “forge and heat treating operation.” Fifth, in calculating the dumping margins, TMC claims that the petition never identified any product other than forged. All normal values were based on the costs incurred in the forging process. Sixth, TMC argues that the petition, in the production process section, describes in detail the forging process. Moreover, TMC notes that both the Department and the ITC included language taken directly from the description of the forging production process and included it in the scope of the investigation. Seventh, TMC contends that the petitioner stated, in the petition, that subject merchandise meets American Standard Institute (ANSI) standards since it bids for General Services Administration contracts which require picks to meet this standard. In order to meet ANSI standards, TMC claims that picks have to be heat-treated.

TMC also argues that the Department, in the LTFV investigation, determined that there were four classes or kinds of HFHTs and defined the scope to include only these four classes of products. Moreover, TMC emphasizes that the scope from the LTFV investigation specifically states that “{heavy forged hand tools} are manufactured through a hot forge operation...” According to TMC, there is nothing ambiguous about this language. TMC believes that, contrary to the petitioner’s contention, the scope is limited to forged hand tools and there is nothing in the scope that includes hand tools manufactured by any other method.

TMC next turns to the final injury report issued by the ITC. TMC notes that the ITC selected eight products to evaluate, all of which were forged. There was no mention in the ITC Final Report that the subject merchandise was manufactured in any way other than forging. Further, TMC notes that the ITC Final Report included the “quality of forging” as one of the product characteristics it examined and even had a separate section on the “quality of forgings” when discussing the differences between subject merchandise and domestic like product. TMC argues that if the subject merchandise did not have to be forged, the ITC would not have stressed this issue. TMC also notes that the petitioner, in its post-hearing brief to the Commission, confirmed that the subject merchandise was heavy forged hands tools since it used the term “forged” repeatedly in this submission. Concerning the ITC’s use of the phrase “method most often used in the production of the subject products,” TMC states that the “most often” language was likely intended to reflect different forging methods or different methods for heating and shaping steel. TMC contends that, in any case, the Department’s language and not the ITC’s language is controlling.

Regarding the 1995 memorandum that excluded cast pick heads from the 1992-1993 administrative review, TMC states that a formal scope inquiry of the picks/mattocks order and subsequent Federal Register notice was not necessary since no party objected to SMC’s request to exclude cast pick heads. If the petitioner was concerned, it certainly would have filed

comments on SMC's request. According to TMC, the decision to treat cast pick heads as outside the scope occurred soon after the LTFV investigation, when many of the same individuals in the Department who were involved in the investigation were also involved in subsequent reviews. In rebuttal to the argument that the Pulaski Tools scope ruling controls the handling of cast picks under the orders, TMC argues that this scope inquiry is of no help since forging was not at issue in this inquiry. TMC notes that Pulaski Tools are forged tools. The issue in question was whether the absence of dies in the forging process took the Pulaski Tool out of scope of the order.

In rebuttal to the petitioner's contention that cast picks are not distinct from forged picks under the criteria set forth in Diversified Products, TMC states that (1) cast picks and forged picks have different physical characteristics, since cast picks cannot be heat treated, which makes them weaker than forged picks; (2) cast picks are used for light gardening rather than digging, since they are not as strong, and therefore do not meet customer's expectations in the same way as forged picks; (3) since cast picks are not as strong as forged picks, they can not have the same ultimate use as forged picks, such as digging into hard soil. TMC contends that if cast picks could be used interchangeably with forged picks, every company would make cast picks since they are less costly to produce. TMC states that cast products are less costly to produce because they are made with scrap iron or steel rather than the billet or bar used for forged products, and they do not require forging equipment.

In rebuttal to the petitioner's contention that excluding cast picks from the scope creates a circumvention problem, TMC again states that cast picks cannot be substituted for forged picks. TMC states that since cast picks have been subject to the dumping order to date, and the petitioner has never raised the issue before, one must assume that the failure to include cast picks in the dumping order does not represent a major problem.

On August 5, 2003, the Department placed two items on the record of this scope inquiry: (1) page A-3 of the ITC Final Report and (2) the scope ruling on skinning axes dated March 8, 2001. See Memorandum from Thomas Futtner, Acting Office Director, to Holly Kuga, Acting Deputy Assistant Secretary, "Final Scope Ruling - Antidumping Duty Orders on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China - Request by Import Traders, Inc. for a Ruling on Skinning Axes," dated March 8, 2001 (Skinning Axes). TMC objected to placing these two items on the record for the following three reasons. First, TMC states that by putting page A-3 from the ITC Final Report on the record, it is TMC's belief that the Department is incorrectly giving significant weight to the ITC Final Report. It is TMC's position that the Department, not the ITC, determines what products are subject to the investigation. TMC concludes by stating that for purposes of future reference, the entire ITC Report should be placed on the record of this inquiry. Second, TMC notes that the Department did not issue a preliminary ruling in the Skinning Axe scope inquiry, but instead issued only a final determination. If the Department were to apply that decision in this case, TMC argues that it will be denied an opportunity to have the Department address the production issue. By placing the decision on the record, TMC contends that the Department is implicitly

stating that the Skinning Axe decision has precedential value. However, if the Skinning Axe ruling is allowed to stay on the record, TMC argues that the concurrent ruling on 18-inch and 24-inch pry bars should also be placed on the record. Lastly, TMC notes that it believes that the Department and the petitioner, during the LTFV investigation, defined the scope to cover only forged products. If the petitioner or the Department intended to include non-forged products in the scope of the order, TMC states that the Department should produce documents demonstrating this intention and place them on the record of this inquiry. Alternatively, if there are no documents showing that the Department or the petitioner intended to include non-forged products in the scope of the order, TMC argues that the Department should make a statement to that effect.

### **APPLICABLE REGULATIONS**

The regulations governing the Department's AD scope determinations can be found at 19 CFR 351.225. On matters concerning the scope of an AD order, our initial bases for determining whether a product is included within the scope of an order are the descriptions of the product contained in the petition, the initial investigation, and the prior determinations of the Secretary (such as prior scope rulings) and the ITC. See 19 CFR 351.225(d) and 351.225(k)(1). Such scope determinations may take place with or without a formal scope inquiry. See 19 CFR 351.225(d) and 351.225(e). If the Department determines that these descriptions are dispositive of the matter, it will issue a final scope ruling as to whether or not the merchandise in question is covered by the order. See 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC 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 merchandise; 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<sup>1</sup> criteria. 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.

Documents, or parts thereof, from the underlying investigations deemed relevant by the Department to the scope of the outstanding orders were made part of the record of this scope determination and are referenced herein. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the record for this scope ruling.

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<sup>1</sup> Diversified Product Corp. v. United States, 6 CIT 155, 572 F. Supp. 883 (1983).



## ANALYSIS

The issue presented by this scope inquiry is whether cast picks exported by TMC fall within the scope of the AD order on picks/mattocks. As noted above, our initial bases for determining whether a product is included within the scope of an order are the descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary and the ITC.

The petition filed with the Department and the ITC defines the relevant merchandise subject to investigation as "Picks and mattocks/(as of 1/1/89) Mattocks, Picks, Hoes, and Rakes and Parts Thereof," classified as HTSUS 8201.30.00/TSUSA 648.5300. See the Petition at 11. Regarding hoes and rakes, the petition states "hoes and rakes in HTSUS 8201.30.00 are not heavy forged hand tools and are not subject to investigation..." See the Petition at 11. Thus, hoes and rakes are specifically excluded by the petition and need not be considered further. The petition further describes the subject merchandise on page 1, stating that "{h}eavy forged hand tools are hardware quality tools of the following general description: ... digging tools such as picks and mattocks" (emphasis added). Thus, the petition identifies picks as subject merchandise and makes no specific exclusions regarding picks or mattocks.

The Department's AD order defines the scope as follows:

The products covered by these investigations are HFHTs comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg. (3.33 pounds) ("hammers/sledges"); (2) bars over 18 inches in length, track tools and wedges ("bars/wedges"); (3) picks and mattocks ("picks/mattocks"); and (4) axes, adzes and similar hewing tools ("axes/adzes").

HFHTs include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel woodsplitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff System (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded from these investigations are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under.

HFHTs Orders (emphasis added). We note that the cast picks in question fall under the HTSUS subheading 8201.30.00 included in the scope from LTFV investigation.

The ITC stated in its final injury analysis that:

The HFHTs included in the scope of this investigation consist of the following products, finished or unfinished, with or without handles: (1) hammers, sledges, and mauls . . . ; (2) bars of over 18 inches in length . . . ; (3) picks and mattocks . . . ; (4) axes, adzes, and similar hewing tools . . . Hoes and rakes are not covered by this investigation. The term "HFHTs" does not include hammers and sledges of 1.5 kilograms in weight and under or bars of 18 inches in length and under . . .

ITC Final Report at A-3 (emphasis added).

The product description in the petition, the AD order, and the ITC Final Report specifically identifies "picks" as one of the HFHTs included within the scope. There are no exclusions for picks of a particular weight, shape, size, or produced through any specific manufacturing process. Also informative is the letter the petitioner submitted to the Department and the ITC for the record in the LTFV investigation, clarifying the scope of the petition. The petitioner stated that the scope covers all tools entered under the relevant HTSUS categories, unless the tool is specifically excluded. See letter from the petitioner to the Department and the ITC, dated April 17, 1990 (emphasis added). The description submitted by TMC indicates that the cast picks at issue are clearly picks, of the same basic weight, shape, and size as forged picks. The Department considers the descriptions of the merchandise at issue dispositive, and therefore has not considered the additional factors set forth at 19 CFR 351.225(k)(2)..

TMC contends that its cast picks are outside the scope of the AD order based upon differences between its manufacturing process and that described in the scope. The scope in the AD order and subsequent determinations of the Secretary states that "HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature and formed to final shape on forging equipment using dies specific to the desired product shape and size." Read alone, this language seems to indicate that forging is the only possible manufacturing process for HFHTs. However, the Department finds that this language merely describes one of several possible processes employed in the manufacture of HFHTs. Specifically, the petition and the ITC Final Report indicate that the description of the manufacturing process in the scope is a general, illustrative description and does not limit the scope to HFHTs produced through a forging process. In describing the production process of HFHTs, the petition on page 2 states that:

The manufacturing process is generally described as a hot forge operation in which fine grain special bar quality steel of the needed metallurgy and cross-sectional dimension is sheared to the required length, heated to forging temperature in a fossil fuel furnace, and formed to final shape on forging

equipment using dies specific to the desired product shape and size . . .

The Petition at 2 (emphasis added).

The ITC specifically states “the method used most often,” to produce HFHTs “is forging,” and then proceeds to describe that particular production process. See ITC Final Report at A-4 (emphasis added). Thus, the ITC and the petition, through the use of general and inclusive language, describe forging as a common method, but not the only method used to produce merchandise subject to the order.

Likewise, the scope of the orders notes that HFHTs are manufactured through a hot forge operation, but it does not state that this is the only operation used to make HFHTs or the only process covered by the scope of the orders. Moreover, nothing in the record of this case suggests that the Department had a reason to limit the scope of this proceeding to a single production type, such as forging. On the contrary, as discussed above, when read in the context of the record of this proceeding, the Department finds the language of the order referencing the predominant production method – the hot forging method – illustrative, not exclusionary, allowing for different production processes to be used. This interpretation is consistent with the petitioner’s April 17, 1990 letter advising the Department and the ITC that “this Petition covers all imports entered under the relevant HTSUS items identified in the Scope section of the Petition unless the product has been specifically excluded.” As the language of the AD proceedings is not exclusionary, we find coverage of these orders is not affected by differences in the production processes used to make subject merchandise.

The Department has previously ruled that the language in the AD orders describing the production process is illustrative, not exclusionary, in the final scope rulings regarding Pulaski Tools, 18-inch and 24-inch pry bars, and skinning axes. See Memorandum from Thomas Futtner, Acting Office Director, to Holly Kuga, Acting Deputy Assistant Secretary, “Final Scope Ruling - Antidumping Duty Orders on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People’s Republic of China - Request by Olympia Industrial, Inc. and SMC Pacific Tools, Inc. for a Ruling on Pry Bars with Handles,” dated March 8, 2001 (18-inch and 24-inch Pry Bars) at Comment 2; Pulaski Tools at Comment 1; and Skinning Axes at 5. For example, in Skinning Axes, which dealt with a stamped product, the Department concluded the following:

. . . the scope of the orders notes that HFHTs are manufactured through a hot forge operation, but it does not state that this is the only operation used to make HFHTs or the only process covered by the scope of the orders. Moreover, nothing in the record of this case suggests that the Department had a reason to limit the scope of this proceeding to a single production type. On the contrary, as discussed above, when read in the context of the record of this proceeding, the Department finds the language of the order referencing the predominant production method, the hot forging method, illustrative, not exclusionary, allowing for variations in the exact

process to be used.

See Skinning Axes at 5 (emphasis added). Thus, the Department clearly stated in Skinning Axes, in addition to Pulaski Tools and 18-inch and 24-inch Pry Bars, that the scope of the orders is not limited to hand tools produced through a forging production process. Therefore, our ruling that cast picks are within the scope of the order is consistent with Skinning Axes, Pulaski Tools and 18-inch and 24-inch Pry Bars.

### **RESPONSE TO SPECIFIC COMMENTS MADE BY TMC**

TMC claims in its April 25, 2003 application for this scope inquiry that the Department ruled in the 1992-1993 HFHTs administrative review that cast picks are not covered by the scope of the order on picks/mattocks because this merchandise was “cast.” Specifically, TMC points to the January 3, 1995 Memorandum from Karin Price to the File, where the Department excluded one sale of a cast pick from the 1992-1993 administrative review. We disagree with TMC’s interpretation of this memorandum. This one-page memorandum did not result from a scope inquiry and was not a formal scope ruling pursuant to 19 CFR 351.225. Furthermore, this memorandum does not contain an analysis of the language contained in the petition, the ITC Final Report, nor the LTFV investigation, as directed by 19 CFR 351.225(k)(1). Although the Department did remove one sale of cast picks in the 1992-1993 HFHTs administrative review, it did so in response to an inquiry regarding sales reporting. We did not conduct, at that time, an in-depth scope analysis as we have done in the instant inquiry. Therefore, we find that this memorandum is neither controlling nor dispositive in our analysis of whether cast picks are inside or outside the scope.

In its August 8, 2003 submission, TMC makes four allegations regarding the Department’s placement of page A-3 of the ITC Final Report and the Skinning Axe scope ruling on the record of this inquiry. First, TMC argues that by placing page A-3 of the ITC Final Report on the record, the Department is incorrectly giving “significant weight” to the ITC Final Report. We disagree with TMC. Pursuant to 19 CFR 351.225(k)(1), the Department, when determining whether a particular product is within the scope of an order, will take into account “{t}he descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission” (emphasis added). This section of the Department’s regulations requires the Department to review the description of the merchandise from specific sources, which we have done in our analysis above. We included page A-3 in our analysis in order to establish that the ITC Final Report describes merchandise subject to the order on picks/mattocks simply as “picks and mattocks.” Contrary to TMC’s contention, the fact that we included in our analysis the descriptions from the other sources identified by 19 CFR 351.225(k)(1) demonstrates that we have given equal weight to all sources.

In regard to TMC’s second allegation, TMC notes that the Department rendered its decision in Skinning Axes with no comments by interested parties. TMC argues that if the

Department relies upon Skinning Axes in the instant inquiry, TMC will be denied an opportunity to have the Department address the production issue. We disagree with TMC. In the instant scope inquiry, TMC has placed a significant amount of factual information and argument on the record concerning the central issue of this scope inquiry—whether the scope of the order on picks/mattocks includes non-forged (i.e., cast) picks. The Department has considered TMC's evidence regarding the relevance of the production process and, through our analysis discussed above, has concluded that cast picks, which are not produced through a forging process, are within the scope of the order. Thus, the fact that we have included Skinning Axes in our analysis in no way denies TMC an opportunity to have the Department address the production issue.

Third, TMC argues that, in its opinion, the scope of the order is limited to “heavy forged hand tools” produced by a forging process. If the Department intended to define subject merchandise to include non-forged merchandise, TMC argues that the Department should place on the record any documents that reflect this intention. According to TMC, since the Department is in possession of such records, the Department should be responsible for producing them. Furthermore, TMC contends that if there are no documents reflecting that the Department intended to include non-forged products in the scope of the order, or if there are no documents from the petitioner objecting to the Department's definition of the scope, then the Department should provide for the record a statement to that effect. In response to TMC's arguments, we note that our analysis (see above) of the petition, the determinations of the Department and ITC, and documents which are a part of the record of the LTFV investigation, clearly indicate that the scope of the investigation and subsequent order are not limited to hand tools produced exclusively by the forging process.

Lastly, as to TMC's request that the Department place the entire ITC Final Report, the 18-inch and 24-inch Pry Bar scope ruling, and unspecified documents from the LTFV investigation on the record of this inquiry, we note that all of these documents are available to the public through the public file of this proceeding. Moreover, TMC was free to place these or any other documents on the record of this inquiry in its application for a scope ruling; June 12, 2003 comments, or June 23, 2003 rebuttal comments. In fact, TMC did place many pages from the ITC Final Report and a past scope ruling (i.e., Pulaski Tools) on the record in support of its positions. Therefore, the Department is under no obligation to place any other document on the record of this inquiry since (1) all interested parties have had multiple opportunities to place documents of their choosing on the record of this inquiry, (2) we have allowed parties to comment on the two items we have placed on the record, and (3) we have based our decision on the record evidence.

## CONCLUSION

In summary, in accordance with 19 CFR 351.225(k)(1), our review of the record of this scope inquiry and the factual representations made by TMC support the conclusion that the cast picks in question are included within the scope of the order. Based on our review of the record, we find that the language of the order on picks/mattocks describes the production process

*documents of their company. We have not made any  
comment on the two items we have placed in the  
record evidence.*

**CONCLUSION**

*In summary, in accordance with 19 CFR 351.225(c)(1), our limited  
scope inquiry and the factual representations made by TMC support the order. The  
picks in question are included within the scope of the order. Based on our review,  
we find that the language of the order on picks/matlocks describes the products in question.*

(including forging method) in an illustrative, and not exclusive manner, that allows for variation in the exact process applied, including a casting process. We also conclude that cast picks are digging instruments that are physically the same as other covered picks made by forging, under the scope of the order. Based on the foregoing, we recommend that the Department issue a final scope determination in this case.

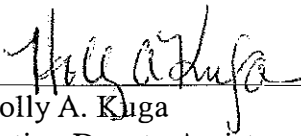
**RECOMMENDATION**

That the Department determines that cast picks exported by TMC are within the scope of the AD order on picks/mattocks from the PRC. If you agree, we will send a letter to interested parties enclosing this ruling and notify the BCBP of our final determination.

Agree ✓

Disagree \_\_\_\_\_

Lets Discuss \_\_\_\_\_



Holly A. Kiga  
Acting Deputy Assistance Secretary  
Group II, Import Administration

9/22/03

Date

