



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
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Scope Inquiry
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FOR PUBLIC FILE

MEMORANDUM TO: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

FOR PUBLIC FILE

FROM: Holly A. Kuga *HAK*
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REGARDING: Antidumping Duty Orders on Heavy Forged Hand Tools, Finished
or Unfinished, With or Without Handles, from the People's
Republic of China

SUBJECT: Final Scope Ruling – Request by Olympia Industrial Inc., for a
Scope Ruling on the MUTT®

SUMMARY

Pursuant to 19 C.F.R. § 351.225(k)(2), we recommend that the Department of Commerce (“the Department”) determine that the MUTT®, which is a forged scraper, with or without a handle, is within the scope of the antidumping duty order covering axes, adzes, and similar hewing tools from the People’s Republic of China (“PRC”), one of the four classes or kinds of merchandise covered by the antidumping duty orders on Heavy Forged Hand Tools (“HFHTs”). See Antidumping Duty 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”).

BACKGROUND

On October 9, 2003, Olympia Industrial Inc. (“Olympia”), requested that the Department determine whether MUTTs®, with or without handles, are within the scope of the HFHTs Orders. According to Olympia, the MUTT® is a forged scraper that has multiple uses including a number of landscaping applications. A MUTT® has a long wooden handle and a chisel-like blade at the end. More specifically, a MUTT® can be used in various situations, such as cutting roots, edging, scraping and cutting shingles from a roof, or chipping ice on driveways and sidewalks. Olympia states that the MUTTs® it imports are made of steel and manufactured using a forging process.



On December 2, 2003, the Department initiated a formal scope inquiry, pursuant to 19 C.F.R. § 351.225(e), and requested comments from all interested parties. No comments were submitted. On March 4, 2004, the Department requested that Olympia identify the specific models for which the scope inquiry was submitted and provide product samples for the merchandise. In its March 10, 2004, response, Olympia stated that the specific models for which the scope inquiry was submitted are three MUTT[®] blades (5"x4", 8"x4", and 9"x7") without handles and the same MUTT[®] blades with handles identified by eight model numbers in Exhibit 2 of Olympia's October 9, 2003, scope ruling request. These model numbers are: 64-386, 64-389, 64-392, 64-393, 64-394, 64-396, 64-397, 64-398. Olympia provided the Department with samples of models 64-386, 64-392, and 64-396.

On July 29, 2004, the Department requested interested parties to submit comments and/or factual information regarding whether the MUTTs[®] imported by Olympia satisfy the criteria identified in 19 C.F.R. § 351.225(k)(2). Interested parties were asked to submit comments regarding whether the MUTTs[®] imported by Olympia should be included under any of the four orders covering HFHTs from the PRC. Pursuant to this request, Olympia submitted its comments on September 10, 2004, and the petitioner provided rebuttal comments on September 17, 2004.

APPLICABLE REGULATIONS

The regulations governing the Department's antidumping duty scope determinations can be found at 19 C.F.R. § 351.225. The Department's 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 less-than-fair-value ("LTFV") investigation, and the prior determinations of the Secretary (such as prior scope rulings) as well as the determinations of the International Trade Commission ("ITC"). See 19 C.F.R. § 351.225(d) and § 351.225(k)(1). Such scope determinations may take place with or without a formal scope inquiry. See 19 C.F.R. § 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 C.F.R. § 351.225(d).

Conversely, where the descriptions of the merchandise contained in the petition, the LTFV 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 C.F.R. § 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 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 and previous determinations deemed relevant by the Department to the scope of the outstanding antidumping duty orders have been 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.

PRODUCT DESCRIPTIONS

The Department's antidumping duty orders on HFHTs from the PRC define the scope of these orders 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 the required length, heated to forging temperature and formed to the 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.

See HFHTs Orders.

The original petition describes the covered merchandise as follows: (1) hammers and sledges, with or without their handles, with heads over 1.5 kg (3.25 pounds) each; (2) crowbars, track tools, and wedges; (3) picks and mattocks; and (4) axes, adzes, and hewing tools other than machetes. See Letter from Woodings-Verona Tool Works, Inc., "Petition for the Imposition of Antidumping Duties on Heavy Forged Hand Tools, With or Without Handles, from the People's Republic of China," dated April 4, 1990 ("Petition"), at 11. The Petition also identifies certain types of HFHTs that are specifically excluded from the scope. According to the Petition, the products excluded are "(1) hoes and rakes in HTSUS 8201.30.00 are not heavy forged hand tools and are not subject to investigation, and (2) bars eighteen inches and under in HTSUS 8205.59.30 are not heavy hand tools and are not subject to investigation." Id. Lastly, the Petition

also stated that:

This Petition covers products imported with or without handles, whether painted or unpainted....This Petition covers merchandise even if it is transhipped through third countries, where it is finished, by painting, handle insertion, and other minor finishing operations. The process of attaching a handle and painting a head is a minor assembly and finishing operation.

See Petition at 12. Additionally, the Petition describes the production process for HFHTs as follows: “{Heated steel} is formed to final shape on forging equipment such as drop hammers, mechanical forging presses or upsetters using closed dies, or a straight side forging press using open dies.” See Petition at 14.

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 . . .

See Heavy Forged Hand Tools from the People's Republic of China, Determination of Injury, USITC Publication 2357, February 1991 (“ITC Final Injury Report”) at A-3.

ARGUMENT

Olympia states that the scope of any antidumping duty order is determined according to the provisions of 19 C.F.R. § 351.225(k)(1) of the Department’s regulations. Under this section, Olympia states that the Department must look to: (1) the product description contained in the final antidumping order; (2) the preliminary and final determinations leading up to that order; and (3) the original petition, to determine whether merchandise is covered by an order. Olympia argues that if the legally operative language of the scope description is clear, these sources are dispositive. Olympia contends that the Department need not, indeed cannot, consider other factors if the sources are dispositive. According to Olympia, in the case of MUTTs[®], both the language and the designated Harmonized Tariff Schedule of the United States (HTSUS) subheadings are clearly dispositive of the issue, and do not include MUTTs[®].

In arguing that the MUTT[®] is outside the scope of the HFHTs Orders, Olympia makes three primary arguments. First, Olympia argues that the HTSUS category for the MUTT[®] is different from the classes or kinds of merchandise covered by the scope of the orders and, as such, the MUTT[®] is not included in the scope of the orders. Olympia reports that MUTTs[®] are currently classifiable under HTSUS subheading 8205.59.5510, and this subheading includes “Other hand tools (including glass cutters) and parts thereof” and more specifically, “edged hand tools” other than “Single edge razor blades other than for shaving.”

Second, Olympia asserts that while the scope description includes “axes, adzes and similar hewing tools,” a MUTT[®] is not an axe or an adze and is not “similar” to an axe or an adze. According to Olympia, a MUTT[®] does not look like an axe or adze. See Attachment 1. Unlike an axe, the handle on a MUTT[®] is fitted vertically, so that it is parallel rather than perpendicular to the blade. Furthermore, Olympia contends that MUTTs[®] are used primarily in landscaping applications. Olympia states that while one could use axes or adzes for landscaping, landscaping is not the intended function of these products. The blade of a MUTT[®] is not honed to the same fine edge of an axe or adze and to use an axe or adze for landscaping would quickly dull the edge. Thus, Olympia maintains, one cannot “reasonably” consider MUTTs[®] to be similar to axes or adzes. Olympia also contends that while MUTTs[®] are not similar to axes or adzes, MUTTs[®] are not considered to be (or even similar to) one of the other specified subject products: drilling hammers, sledges, mauls, picks and mattocks, assorted bar products and track tools including wrecking bars, digging bars, and tampers, and steel woodsplitting wedges.

Third, Olympia claims that not only were MUTTs[®] not specified in the scope of the HFHTs Orders, MUTTs[®] were also not identified in the Petition, the LTFV investigation, or the injury analysis conducted by the ITC. Nor is there any evidence that MUTTs[®] were produced by the petitioner. Therefore, Olympia contends that the petitioner had no reason to request inclusion of MUTTs[®] in the order. Nevertheless, Olympia contends that the petitioner could have specified MUTTs[®], or at least indicated that items intended to be covered could be classified in other HTSUS subheadings. However, Olympia argues that not only did the petitioner not include MUTTs[®] by name or by general description, but the petitioner also has repeatedly argued that the scope of the antidumping duty orders was defined by the listed HTSUS numbers. Olympia agrees with the petitioner that the scope of the HFHTs Orders should properly be limited by the applicable HTSUS numbers originally identified in the Petition and currently used in the scope.

According to Olympia, the question of the inclusion of MUTTs[®] was not raised by the petitioner until 2001, which clearly indicates that MUTTs[®] were not considered within the scope of the HFHTs Orders contemporaneously with the orders’ issuance. Nor, Olympia argues, can the petitioner claim that MUTTs[®] were later developed merchandise because Olympia’s MUTTs[®] have been in commerce since May 1989, before the Petition was filed. Olympia also claims that the petitioner relies on the language used by the Court of International Trade (“CIT”) in Torrington Co. v. United States, 786 F. Supp. 1021 (CIT 1992)(“Torrington”)¹ to assert that the petition language is dispositive. In making this argument, Olympia asserts that the petitioner has effectively precluded itself from arguing for the expansion of the scope beyond what was contemplated contemporaneously with the original Petition. Olympia notes that while Torrington was later clarified by more inclusive language in Nitta Industrial v. United States, 997

¹ “When a question arises as to whether a particular product is within ... the scope of an investigation, the ITA first must determine whether the petition covers that product.” See Torrington 786 F. Supp. 1021.

F.2d 1459 (Fed. Cir. 1993) (“Nitta”),² it is clear in any case that the scope of an investigation is determined at the time of the LTFV investigation. According to Olympia, the Court of Appeals for the Federal Circuit (“CAFC”) has ruled that “Commerce cannot ‘interpret’ an antidumping order so as to change the scope of that order, nor can Commerce interpret an order in a manner contrary to its terms.” See Duferco Steel, Inc. v. United States, 296 F.3d 1087 (Fed. Cir. 2002) (“Duferco”) (quoting Eckstrom Indus., Inc. V. United States, 254 F.3d 1068, 1072 (Fed. Cir. 2001)). Accordingly, Olympia (citing Duferco) states “{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.” (Emphasis added by Olympia.) Duferco, 296 F.3d at 1095.

In conclusion, Olympia states that it is well settled that if the scope language in a petition, a final LTFV determination, and an antidumping duty order are dispositive, any scope inquiry rests entirely on the legally operative language contained therein. See Torrington, Nitta, Duferco and 19 C.F.R. § 351.225(k)(1). According to Olympia, the scope descriptions in the HFHTs Orders are dispositive. “Olympia’s position is that a thorough investigation of the record indicates that the operative language includes only merchandise covered by the HTSUS numbers listed in the scope descriptions.” Thus, Olympia argues that there is no reason for the Department to deviate from this approach. Citing Duferco, Olympia asserts that to do so would represent a clear departure from the Department’s policy and introduce an interpretation of the language “in a manner contrary to its terms,” that would “change the scope of the order.”

In rebuttal, the petitioner argues that Olympia has presented a misleading discussion of the Department’s first scope test - whether the merchandise in question was contemplated by the petition, by the Department, or by the ITC in its injury investigation. According to the petitioner, Olympia’s arguments boil down to the following three claims: (1) the HTSUS category for the MUTT[®] is different from the categories covered by the scope and, as such, the MUTT[®] is not included in the scope of the order; (2) the MUTT[®] is not an axe or adze and is not similar to HFHTs, and (3) the domestic industry failed to identify or recognize the MUTT[®] in the Petition or in subsequent segments of the proceeding. The petitioner claims that each of these assertions is based upon faulty assumptions, or simply factually incorrect.

First, regarding the HTSUS categorization of the MUTT[®], the petitioner disagrees with Olympia’s assertion that the MUTT[®] is out of scope because Olympia enters it under HTSUS subheading 8205.59.5510, which is a subheading not listed in the scope or in the Petition. The petitioner states that this logic is suspect for two reasons. First, an importer is allowed to select the HTSUS subheading under which it enters merchandise as long as it believes that the merchandise being entered is correctly classified. However, the petitioner contends that Olympia

² “When determining whether a product is covered by a final antidumping duty order, it first looks to the product descriptions contained in that order, the preliminary and final determinations of the ITA and the International Trade Commission leading up to that order, and the petition itself.” See Nitta 997 F.2d 1459.

has supplied no evidence demonstrating that the HTSUS category it selected is indeed the correct category. According to the petitioner, the Department has no basis to rely on Olympia's self-selected HTSUS category. Second, the petitioner maintains that, assuming *arguendo* Olympia's chosen HTSUS subheading is correct, Olympia fails to recognize that HTSUS subheadings are provided for convenience and customs purposes, and that the written description remains dispositive. According to the petitioner, the four HTSUS numbers listed in the scope are neither definitive nor dispositive, nor do they set explicit boundaries as to what merchandise is included within the scope of the order. The petitioner states that since the written description of the merchandise determines the scope of the orders, Olympia cannot argue that the mere existence of an alternative HTSUS number excludes a MUTT[®] from the antidumping duty orders on hand tools.

The petitioner also rebuts Olympia's second argument that a MUTT[®] is neither an axe nor an adze and that it is not even similar to such tools. The petitioner states that while it might be true that a MUTT[®] is neither an axe nor an adze, the scope of the order on axes and adzes also includes "similar hewing tools." The petitioner notes that according to Merriam-Webster's Online Dictionary, to perform the act of hewing is to "cut with blows of a heavy cutting instrument." An alternative definition of hewing is to "give form or shape to with, or as if with, heavy cutting blows." From these definitions, the petitioner claims that it is clear that a hewing tool is relatively heavy (*i.e.*, more than a pair of scissors) and is designed to employ the weight of the tool to assist in cutting or chopping. The petitioner observes that according to the product brochure for the MUTT[®], the MUTT[®] is used for cutting and chopping – tasks that are similar, if not identical, to the merchandise described in the axe/adze/hewing tool class or kind of merchandise. The petitioner further states that the particular thing the merchandise happens to cut – be it a tree root, log or any other item – is irrelevant. The petitioner contends that even if axes and adzes are not generally used for the same types of cutting tasks as a MUTT[®], Olympia ignores that other hewing tools, included within the scope of the axe/adze order, are used for similar purposes. The petitioner also argues that the fundamental characteristics of a forged MUTT[®] and a forged axe or adze are the same: both types of hand tools are produced from base metal using a forging operation.

The petitioner also contends that Olympia created an artificial distinction when it argued that the MUTT[®] is not honed to the same fine edge of an axe or adze and that an axe used in the same types of activities would quickly dull the edge. According to the petitioner, all axes and adzes will dull over time regardless of their end use, as will a MUTT[®]. The petitioner argues that, because the MUTT[®] brochure claims that MUTT[®] blades can be re-sharpened, Olympia and the producer of the MUTT[®] contemplated that the MUTT[®] blade should be sharp, but will dull over time.

Lastly, the petitioner rebuts Olympia's claim that the MUTT[®] is outside the scope of the HFHTs Orders because the MUTT[®] was not specifically identified in the Petition, the Department's LTFV investigation, or the ITC injury investigation. While the petitioner acknowledges that the MUTT[®] was not explicitly named in the scope of the investigation at the

Petition stage, the petitioner did broadly define the investigation's scope to include "hewing tools." Given that the MUTT[®] has a primary function of cutting, the scope language as outlined in the Petition adequately covers forged, cutting tools such as the MUTT[®]. Contrary to Olympia's suggestion, the Department does not require that a petitioner specifically identify every single variation of a tool that is to be included within the scope of the order. The petitioner argues that Olympia's rationale would render meaningless the Department's ability to conduct scope inquiries for all merchandise except for merchandise developed subsequent to the issuance of the antidumping duty order. The petitioner states that it is absurd to argue that the failure to identify a specific trade name or variation of a product in a Petition or subsequent LTFV and injury investigation disqualifies that trade name or variation from inclusion in the scope of an order. Furthermore, the petitioner claims that it is also absurd to argue that the MUTT[®] was not contemplated as in-scope merchandise simply because the question regarding coverage of the MUTT[®] did not come to light until 2001. Lastly, the petitioner argues that the purpose of a scope inquiry is to clarify coverage when questions are raised regarding specific imports.

ANALYSIS

I. Review of the Product Descriptions in the Scope, Petition, and ITC Final Injury Report

When determining whether a specific product is within the scope of an antidumping duty order, the Department first reviews the descriptions of the subject merchandise contained in the petition, the LTFV investigation, and the determinations of the Secretary (such as prior scope rulings) and the ITC. See 19 C.F.R. § 351.225(d) and § 351.225(k)(1). In discussing the interpretive process the Department should follow in making scope rulings pursuant to 19 C.F.R. § 351.225(k)(1), the CAFC stated:

The critical question is not whether the petition covered the merchandise or whether it was at some point within the scope of the investigation. The purpose of the petition is to propose an investigation ... A purpose of the investigation is to determine what merchandise should be included in the final order. Commerce's final determination reflects the decision that has been made as to which merchandise is within the final scope of the investigation and is subject to the order. Thus, the question is whether the {final scope of the order} included the subject merchandise.

See *Duferco*, 296 F.3d at 1096. The CAFC also noted that, "a predicate for the interpretive process {in a scope inquiry} is language in the order that is subject to interpretation." *Id.* at 1094. Through these statements, the CAFC found that the appropriate place to begin the analysis as to whether a product is included within the scope of an antidumping duty order is to review the scope language of the antidumping duty order itself. Furthermore, the CAFC stated 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.” (Emphasis added.) Id. at 1089.

In accordance with Duferco and 19 C.F.R. § 351.225(k)(1), the Department first examined the language of the scope of the HFHTs Orders. As noted above, the scope of the HFHTs Orders covers the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg.; (2) bars over 18 inches in length, track tools and wedges; (3) picks and mattocks; and (4) axes, adzes and similar hewing tools. The scope of these orders also identifies additional HFHTs as subject merchandise: drilling hammers, sledges, axes, mauls, bars, picks, mattocks, assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel woodsplitting wedges. Thus, the scope of the HFHTs Orders does not specifically identify the trademarked name MUTT[®], or more generally, scrapers, as covered merchandise.

While the MUTT[®] is not specifically identified by the scope of any order, it is also not specifically excluded by the scope. The last sentence of the scope of the orders identifies several exclusions: “{s}pecifically 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.” See HFHTs Orders. Neither party has argued that the MUTT[®] is a type of hammer, sledge, hoe, or rake. Therefore, the scope does not specifically exclude MUTTs[®], or more generally scrapers, from the orders.

Since the MUTT[®], or more generally a scraper, is not specifically identified or excluded by the scope of the HFHTs Orders, the Department, in accordance with Duferco, examined the language of the scope to determine whether it can be reasonably interpreted to include the MUTT[®]. Moreover, pursuant to 19 C.F.R. § 351.225(k)(1), the Department considered the descriptions of the merchandise in the petition, the LTFV investigation, and the determinations of the Department and the ITC, in analyzing whether the scope can be reasonably interpreted to include the MUTT[®].

The merchandise subject to the HFHTs Orders are certain types of forged hand tools. As noted above, the language of the scope begins by identifying the four classes or kinds of merchandise covered by these orders, and then lists several examples of specific products subject to these orders. No party has argued that the MUTT[®] should be covered by the orders on hammers and sledges or picks and mattocks. Although the petitioner notes that the MUTT[®] could be covered by the bar and wedge order, its brief addresses coverage of the MUTT[®] under the axes and adzes order. The class or kind of merchandise covered by this order is “axes, adzes and similar hewing tools.” The Petition states that it covers “hewing tools such as axes” and that “axes are used as hewing tools.” See Petition at 1 and 15. The ITC described hewing tools in the following manner:

Hewing tools. – Axes, adzes, and similar tools are generally referred to as hewing tools. Axes are generally grouped into two categories: large axes and special-purposes axes. Large axes are intended primarily for chopping wood. They are

manufactured with either two cutting edges (double bit) or a single cutting edge (single bit). The single-bit axes have on the opposite side of the axe head a hammer face that be used for pounding. Special-purpose axes are designed to function as two tools. For example, the mattock axe is a single-bit axe with an adze-shaped grubbing blade on the back and is designed for digging, prying, or chopping.

See ITC Final Injury Report at A-3 and A-4. Since the scope of the HFHTs Orders, the Petition, and the ITC Final Injury Report all refer to “similar hewing tools,” it is clear that this class or kind of merchandise includes hand tools that are similar to axes and adzes, as long as the primary purpose of the tool is to “hew.” Although this class or kind of merchandise clearly includes “similar hewing tools,” the scope of the HFHTs Order, the Petition, and the ITC Final Injury Report do not provide a sufficient description of what types of products constitute “similar hewing tools” to determine whether MUTTs[®] fall within the scope of this review. Olympia describes the MUTT[®] as a hand tool that is used for cutting and chopping applications, such as cutting roots, edging lawn, chopping ice, and cutting sod. We note that the words *cut* and *hew* are synonyms.⁴ Due to the fact that this class or kind of merchandise is not limited to axes and adzes, but also includes similar hewing tools, in conjunction with the fact that the MUTT[®] is used for cutting and chopping applications, it is possible to interpret the scope as including the MUTT[®] in the antidumping duty order on axes/adzes. However, since there is no description of “similar hewing tools” in the scope, nor much information provided about “similar hewing tools” in the Petition or ITC Final Injury Report, the Department cannot conclude upon this basis alone that the MUTT[®] is included in the scope of the HFHTs Orders.

With regard to Olympia’s contention that MUTTs[®] were not identified in the Petition or in any document related to the LTFV investigation, we note that the absence of a reference to a particular product in a petition does not necessarily indicate that the product is not subject to an order. See Novosteel SA v. United States, 128 F. Supp. 2d 720,726 (CIT 2001), affd. 284 F.3d 1261 (Fed. Cir. 2002). Further, the CIT has ruled that “a petitioner is not required to circumscribe the entire universe of articles which might possibly be covered by the order it seeks.” See Nitta, 997 F.2d at 1465 (quoting American NTN Bearing Mfg. Corp. v. United States, 739 F. Supp. 1555, 1562 (CIT 1990)).

After listing several examples of the types of products covered by the HFHTs Orders, the scope of these orders then describes the production process used to manufacture HFHTs. Olympia states that the MUTT[®] is a forged hand tool that is used for cutting applications, such as cutting tree roots, edging lawn, or chipping ice. According to Olympia, the MUTT[®] is “roll forged,” where steel is heated then compressed between two rollers to the specified thickness then cooled. When cooled, the MUTT[®] is cut to its finished shape. Olympia notes that although the MUTT[®] is produced in a forging factory, the tools needed to make the MUTT[®] are different from those used to make HFHTs. The scope of the HFHTs orders states, “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.” See HFHTs Orders. The key element of this sentence is the part that identifies the production process used to produce subject merchandise: “HFHTs are manufactured through a hot forge operation...” The remainder of the sentence, “...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,” merely describes the elements generally found within a typical forging production process. The plain language of the key element of this sentence clearly indicates that the HFHTs covered by these orders are manufactured through a “hot forge operation.”

With respect to the record, the Department notes that the Petition describes with illustrative language alternate forging production processes. Specifically, the Petition states that heated steel is formed with various forging equipment such as drop hammers, mechanical forging presses or upsetters using closed dies, or straight side forging presses using open dies. See Petition at 14 (emphasis added). In addition, the ITC, in its final determination, states with respect to the production process that it is describing “the method used most often,” rather than limiting its definition to processes using dies. See ITC Final Injury Report at A-4. Based on our analysis of the record, the Department finds that both the Petition and the ITC Final Injury Report describe production processes for HFHTs that are illustrative and not exclusive of variations in the forging process. For example, the Petition expressly lists both die and non-die forging processes. The ITC specifically states that “the method used most often,” an inclusive term, to produce HFHTs “is forging,” and then proceeds to describe that particular production process. See ITC Final Injury Report at A-4. Moreover, the Department has addressed the question of whether variations in the forging process render a product out of scope. For example, the Department found the Pulaski tool and certain pry bars to be within the scope even though these products are forged without dies. See Memorandum from Thomas F. Futtner to Holly A. Kuga, “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”); see also Memorandum from Thomas F. Futtner to Holly A. Kuga, “Final Scope Ruling – Antidumping Duty Finding 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 and 24 Inch Pry Bars”). Thus, for these reasons, product coverage is not an issue as long as some form of forging is involved.

Consistent with that interpretation, respondents have reported, and we have analyzed, hand tools produced by different forging processes. For example, Shandong Huarong Machinery Co. Ltd. (“Huarong”) is a producer of bar products that are subject to the antidumping duty order on bars/wedges. According to Huarong, it produces subject bars through a forging process where the heated metal is pressed into shape by being passed through rolling equipment. See Memorandum from Jeff Pedersen, Financial Analyst, to the File, “Verification in Dongping Town, Shandong Province, the People’s Republic of China (PRC), of the Questionnaire Responses of Shandong Huarong General Group Corporation in the Antidumping Duty

Administrative Review of Heavy Forged Hand Tools from the PRC,” dated June 26, 2001, at 11 (“Huarong manufactures wrecking bars and crow bars by first heating and rolling steel billet or bars into the desired width and overall shape”); Huarong’s August 11, 2003, sections C and D response, at Exhibit 8 (“Stage: steel rolling, Description: steel rolling, Equipment: steel rolling machine”); see also Heavy Forged Hand Tools From the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 67 FR 57789 (September 12, 2002), and accompanying Issues and Decision Memorandum at Comment 20 (“Huarong uses a hotrolling process to roll the purchased billet into bar with the desired physical dimensions”) (hereafter, these documents are collectively referred to as “Huarong Roll Forging Documents”). Furthermore, two other respondents have reported that subject merchandise is manufactured with different types of forging processes. Specifically, Tianjin Machinery Import & Export Corporation (“TMC”) and Liaoning Machinery Import & Export Corporation (“LMC”) stated that “forging may involve dies or free forging depending on the tool being produced.” See the responses to Section D of the antidumping duty questionnaire submitted separately by TMC and LMC on May 29, 2001, at Exhibit 8 (TMC) and Exhibit 15 (LMC) (hereafter, these documents are collectively referred to as “TMC and LMC Die and Non-Die Forging Documents”).

The scope language states, “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.” See HFHTs Orders. Olympia states that it enters the MUTT[®] into the United States under the HTSUS subheading 8205.59.5510, which includes “Other hand tools (including glass cutters) and parts thereof” and more specifically, “Edged hand tools” other than “Single edge razor blades other than for shaving.” Olympia is correct in that this HTSUS subheading is not listed in the scope of the orders. We reviewed the HTSUS and found that there is no subheading specifically titled for the MUTT[®], or more generally, scrapers. In the absence of a specific HTSUS subheading for scrapers, Olympia has the discretion to select a subheading it feels is the most appropriate category under which to enter the MUTT[®]. Given that Olympia has self-selected this subheading and has not provided any ruling or opinion from U.S. Customs and Border Protection (“CBP”) regarding the appropriate subheading for scrapers, the Department cannot rule out the possibility that the MUTT[®] should be entered under one of the HTSUS subheadings identified by the scope.

However, even if the HTSUS subheading selected by Olympia is the appropriate category, we note that it is the Department’s long-standing practice to provide HTSUS subheadings for convenience and customs purposes. We do not agree with Olympia that an investigation of the record indicates that the operative language includes only merchandise covered by the HTSUS numbers listed in the scope descriptions. To the contrary, the Department stated that the HTSUS subheadings contained in the scope of the LTFV investigation are “provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.” See Initiation of Antidumping Duty Investigations; Heavy Forged Hand Tools, Finished or Unfinished, With or Without handles, From the People’s Republic of China, 55 FR 18364 (May 2, 1990). Further, the CIT has held the reference to HTSUS numbers in the

final order is not dispositive. See Smith Corona v. United States, 915 F.2d 683, 686 (Fed. Cir. 1990). Specifically, the CIT has stated that the “inclusion of various HTSUS headings in a petition ordinarily should not be interpreted to exclude merchandise determined to be within the scope of the antidumping or countervailing duty orders but classified under an HTSUS heading not listed in the petition.” See Wirth Limited v. United States, 5 F. Supp 2d 968, 978-979 (CIT 1998) affd. 185 F. 3d (Fed Cir. 1999). In this case, the Petition did not rest solely upon the HTSUS but rather contained an extensive narrative discussion of the subject merchandise. By Olympia’s own description MUTTs[®] can be defined as hewing tools and hewing tools were specifically identified in the HFHTs Orders, the determinations of the Department and the ITC, and in the Petition. Thus, Olympia’s argument that it enters the MUTT[®] under a HTSUS subheading that is not listed in the scope of the orders does not support a conclusion that the MUTT[®] is outside the scope of the orders.

II. The Product Descriptions Are Not Dispositive

The scope of the HFHTs Orders does not specifically identify the MUTT[®], or more generally scrapers, as subject merchandise. For this reason, we reviewed the scope language to determine whether it may be reasonably interpreted to include the MUTT[®]. The scope states that axes, adzes, and similar hewing tools are subject merchandise. According to Olympia, the MUTT[®] is a hand tool used for cutting and chopping applications, which we find to be synonymous with hewing. Olympia states that the MUTT[®] is a hand tool that is manufactured through a roll forge process, painted and sold with a long handle. Our analysis indicates that merchandise subject to these orders are hand tools manufactured through a variety of forging processes, including roll forging. Moreover, subject merchandise can be painted and sold with a handle, and none of the explicit exclusions included in the scope apply to the MUTT[®]. For these reasons, we find that product descriptions contained in the scope of the HFHTs Orders, the Petition, and the ITC Final Injury Report support the conclusion that the scope can be reasonably interpreted to include the MUTT[®] in the antidumping duty order on axes/adzes. However, since the HFHTs Orders do not cover all forged hand tools and the scope, the Petition, and the ITC Final Injury Report do not provide a detailed description of “similar hewing tools,” we find that the descriptions of the merchandise contained in the scope of the HFHTs Orders, the Petition, and the ITC Final Injury Report are not dispositive.

III. Review of the Diversified Products Criteria

When the scope of the order and the descriptions of the merchandise contained in the petition, the LTFV investigation, and the determinations of the Secretary and the ITC are not dispositive, we will consider, pursuant to 19 C.F.R. § 351.225(k)(2), the Diversified Products criteria.

The Physical Characteristics of the Product

Olympia states that the product in question is the MUTT[®], which is the trademark name

for a series of forged scrapers of varying sizes that it imports from the PRC. According to Olympia, the MUTT[®] has a chisel-like blade and is sold with a long handle. Olympia states that it sells three types of MUTTs[®] with blades that measure: 5"x4", 8"x4", and 9"x7". Olympia argues that MUTTs[®] are currently classified in Chapter 82 of the HTSUS: Tools, Implements, Cutlery, Spoons and Forks, of Base Metal; Parts Thereof of Base Metal, under subheading 8205.59.5510, which includes "Other hand tools (including glass cutters) and parts thereof" and more specifically, "edged hand tools" other than "Single edge razor blades other than for shaving."

Olympia states that the MUTT[®] is intended for multiple uses including cutting, chopping, scraping, digging, ice breaking, root removal, sod cutting, trenching, shingle removing, and tile removal. Olympia characterizes the tool as strong and durable, made of steel manufactured using a roll forging process, where the steel is heated and then compressed between two rollers to the specified thickness, then cooled. When cooled, the MUTT[®] is cut to its finished shape. Olympia notes that the MUTT[®] is not "formed to final shape on forging equipment using dies specific to the desired product shape and size," as is specified in the scope of the HFHTs Orders. According to Olympia, the tools needed to make the MUTT[®] are different from those used to make HFHTs.

Olympia argues that the physical characteristics of a MUTT[®] are similar to those of forged merchandise that is clearly outside the scope of the orders, such as forged edgers, forged hoes, and forged shovels. Like MUTTs[®], these products can be used for a wide range of tasks. For example, Olympia states that the forged garden spade, which is a type of shovel, has similar physical characteristics to the MUTT[®] and can be used for many of the same purposes. In addition, Olympia notes that the shovels it sells are also roll forged.

In rebuttal, the petitioner notes that the MUTT[®] is a forged hand tool. Therefore, under either the more traditional scope test or the more recent precedent of Duferco, Olympia's MUTT[®] has virtually identical physical properties to the tools subject to the HFHTs Orders. The petitioner claims that under the Department's traditional scope analysis, the process through which a particular product is manufactured is not determinative of whether the product falls within the scope of a particular antidumping duty order. Instead, citing Electrolytic Manganese Dioxide From Japan; Preliminary Scope Ruling, 56 FR 56977 (November 7, 1991), the petitioner claims that the Department "presumes that a product which possesses the physical characteristics described in the scope of the investigation will be covered." The petitioner notes that the Department followed this reasoning in the prior scope determinations on Pulaski Tools and 18 and 24 Inch Pry Bars, where the Department stated that the forging process used in manufacturing the subject merchandise is not an exclusive method of production or a limiting characteristic of the scope's order. In fact, the petitioner claims that this is the position it took in the Petition, when it stated "{t}he manufacturing process is *generally described* as a hot forge operation." (Emphasis added by the petitioner.) Furthermore, the petitioner maintains that the ITC followed a similar analysis in its final injury report that stated "the method *used most often* in the production of the subject products is forging." (Emphasis added by the petitioner.)

Given the concurrence of the Petition, the ITC Final Injury Report, and the Department, the petitioner claims it is clear that the production method is not relevant for scope purposes. In light of this concurrence, the petitioner argues that the Department's sole remaining analysis is whether the merchandise is physically similar to an in-scope hand tool. According to the petitioner, MUTTs[®] and subject merchandise are small, non-mechanized tools, consisting of a base metal head and a handle for gripping or holding in an individual's hand. Like an axe, adze, or other hewing tool, the petitioner contends that the MUTT[®] contains a sharpened cutting edge that is used to cut, chop, or scrape. The petitioner concludes that the MUTT[®] and axes, adzes, and similar hewing tools possess virtually identical physical properties.

Alternatively, the petitioner notes that the Department recently applied a somewhat different set of tests to examine whether or not merchandise is within the scope of an antidumping duty order. In light of the decision made by the CAFC in Duferco, the Department utilized different criteria to redetermine whether the cast picks exported by TMC are within the scope of the antidumping duty order covering picks and mattocks. The petitioner notes that, in the redetermination, the Department stated that the description of the forging process in the scope of the HFHTs Orders "merely describes the elements generally found within a typical forging production process." See Results of Redetermination Pursuant to Court Remand, Tianjin Machinery Import & Export Corporation v. United States, Court No. 03-00732 (July 20, 2004) ("Cast Pick Remand"). The petitioner interprets this statement to mean that as long as some forging is involved, the variations in the forging process are secondary. Under the Department's new analysis, the petitioner concludes that Olympia's attempt to distinguish between the specific forging process described in the scope and the "roll forging" used to produce MUTTs[®], is without merit. As long as MUTTs[®] are produced using some form of a forging process, the petitioner states that the Department must find the tool within the scope of the HFHTs Orders. Therefore, the petitioner concludes that the Department must find that a "roll forged" MUTT[®] possesses the same physical characteristics as a forged axe, adze, or similar hewing tool.

The Department agrees with the petitioner. Olympia states that the MUTT[®] is a strong, durable hand tool that is made of steel and has a handle used for gripping the tool. It is undisputed that subject hand tools are also made of steel and, as evidenced by the designation "heavy," are also strong and durable. Olympia also states that the MUTT[®] has a chisel like blade, which is used for cutting and chopping applications. Thus, contrary to Olympia's contention, the MUTT[®] is not like a shovel, as shovels are used for digging and excavation. Indeed, Olympia describes MUTTs[®] as having "chisel-like" blades where as shovels have a scoop shape that enables digging and excavation work. Further, the scoop shape of a shovel allows it to carry dirt or other material. The MUTT[®] blade, which is flat, cannot. Given the sharpened end and flatness of the MUTT[®] blade, it is more physically similar to that of an axes or adze, rather than a shovel. Although Olympia claims that the MUTT[®] is not honed to the same fine edge of an axe or adze, Olympia's brochure states that the MUTT[®] blade is "resharpenable," thereby indicating that the MUTT[®] is initially sold with a sharpened edge. We note that axes and adzes are also sold with a sharpened edged. While there may be some difference in the degree to which the edge is sharp between the MUTT[®] and an axes or adze, we note that the scope

contemplates that there will be some differences between an axe or adze and “similar hewing tools.” The use of the word “similar” indicates that other hewing tools will not be identical to an axe or adze. While there will be differences, these differences will be minor, such that the other hewing tool can reasonably be called “similar” to an axe or adze, and still be encompassed by the order.

Olympia also claims that the physical characteristics of the MUTT[®] are different from subject merchandise because roll forging is a different forging process than the one described in the scope of the HFHTs Orders. As discussed at length above, the Department disagrees with this argument. We find that the key element of the description of the manufacturing process contained in the scope identifies the production process used to produce subject merchandise: “HFHTs are manufactured through a hot forge operation...” The remainder of the sentence merely describes the elements generally found within a typical forging production process. Since the scope allows for variations in the forging process used to produce subject merchandise, it follows that there will be variations in the equipment used to conduct the hot-forge process. As mentioned above, Huarong uses a roll forging process to manufacture subject bars, while the factories that produce the subject merchandise sold by TMC and LMC use both die-based forging and free forging, depending on the product being made. See Huarong Roll Forging Documents and TMC and LMC Die and Non-Die Forging Documents. We note that these products, which are made through different forging processes, are within the same class or kind of merchandise. Therefore, Olympia’s argument that the MUTT[®] is outside the scope of the HFHTs Orders because the equipment needed to make the MUTT[®] is different from that used to make subject HFHTs is without merit.

Expectations of the Ultimate Purchasers

Olympia claims that the type of customer that purchases the MUTT[®] is different from the type of customer that purchases HFHTs. According to Olympia, the MUTT[®] is generally sold in the gardening sections of hardware and do-it-yourself (“DIY”) stores. Olympia states that the customer that purchases a MUTT[®] is one who generally intends to use the MUTT[®] for “light” work and expects the tool to perform a number of different tasks around the yard. According to Olympia, the type of customer that purchases an HFHT includes professionals that buy the tools for heavy work such as cutting down trees (like axes) or digging ditches (like picks or mattocks). On the other hand, a customer will not purchase a MUTT[®] to do heavy work such as cutting down a tree or splitting wood. Olympia argues that a MUTT[®] is not a substitute for any one category of HFHT.

In rebuttal, the petitioner first states that Olympia’s contention that MUTTs[®] are “generally” sold in the gardening sections of hardware and DIY stores is unsubstantiated. On the contrary, it is the petitioner’s experience that MUTTs[®] are often located in the same area of a retail store as striking tools and other subject merchandise. With regard to Olympia’s second assertion, that customers expect the MUTT[®] to perform a number of “light” tasks around the yard, the petitioner contends that small axes, adzes and similar hewing tools can also be used

around the yard. A camp axe can be used to chop twigs and branches while a larger axe can be used to sever and chop exposed roots of trees or vines. The petitioner notes that Olympia's catalog indicates that the MUTT[®] performs many of these tasks. Lastly, with respect to the customers involved, the petitioner notes that the argument put forward by Olympia, that customers purchasing the MUTT[®] generally intend to use the MUTT[®] as a multi-purpose tool whereas axes and picks are used by professionals, is without merit. The petitioner contends that, according to its experience, the majority of axes, adzes, picks, and other hand tools are sold to individual homeowners and consumers, not to contractors or professionals. Conversely, the petitioner notes that there is no evidence that a professional work crew would not or could not employ a MUTT[®] for tasks such as cutting tree roots in ditches. The petitioner concludes by noting that both the professional and casual user of the MUTT[®] will see the tool as one particular item in a continuum of hand tool choices.

The Department finds that Olympia has failed to provide any evidence that convinces us that a purchaser of the MUTT[®] would obtain this tool with the expectation of using it in a significantly different manner than merchandise covered by the antidumping duty order on axes, adzes, and similar hewing tools. The MUTT[®] is a multi-purpose tool that can be used in various cutting and chopping applications. Even though there are slight differences in these applications, the over-riding purpose of the MUTT[®] is to cut and chop. Since the over-riding purpose of axes, adzes, and similar hewing tools is to cut, we find that the expectations of consumers that purchase the MUTT[®] and axes, adzes, and similar hewing tools are very similar. We agree with the petitioner that consumers expect small and large axes to be used for many of the same cutting applications as a MUTT[®]. For example, purchasers of small axes expect these tools to be used in applications such as cutting small branches. Furthermore, purchasers of larger axes expect these tools to sever exposed roots of bushes or trees. Olympia has stated that the MUTT[®] can be used for these functions. While these examples illustrate that the purchasers' expectations for the MUTT[®] and various sizes of axes and adzes are very similar, we acknowledge that they are not completely identical. A consumer may purchase the MUTT[®] with the expectation that it can perform certain activities not well suited for an axe or adze, such as chipping ice. However, the scope anticipated that there will be some differences between axes or adzes and other hewing tools because it uses the word "similar." In this case, even though we find that the expectations of the MUTT[®] purchaser are not identical to the expectations held by the purchaser of an axe or adze, we find that purchasers of both products have very similar expectations.

Lastly, regarding the identities of the consumers who purchase MUTTs[®] or axes and adzes, we disagree with Olympia that axes and adzes are predominantly used by contractors or professionals. Beyond the fact that Olympia has provided no evidence to substantiate its assertion, we find that common sense supports a conclusion opposite to the one advocated by Olympia. Given that the vast majority of homeowners have trees and shrubs on their property and a significant percentage of homeowners have fireplaces, it is logical to assume that individual homeowners purchase a large percentage of the axes and adzes sold in hardware and DIY stores.

The Ultimate Use of the Product

Olympia states, as discussed in its comments regarding the physical characteristics and expectations of the ultimate user, the MUTT[®] is used for light work around a house.

In rebuttal, the petitioner argues that the ultimate use of the MUTT[®] and the hand tools subject to the antidumping duty orders is indistinguishable. The petitioner notes that Olympia claims that the MUTT[®] is used for "light work around a house." According to the petitioner, Olympia ignores the fact that the MUTT[®] is also used for yard work and fails to distinguish the MUTT[®] from subject hand tools with respect to ultimate uses. The petitioner states that axes and adzes are similar to the MUTT[®] in that both can be used around the yard to cut and chop wood, roots, twigs, and branches. In addition, the petitioner contends that the MUTT[®] is used to dig and loosen dirt - the same as certain types of picks, mattocks, and digging bars. Like pry bars, the MUTT[®] can be used to pry up nails. Given this amount of overlap, the petitioner argues that nothing differentiates hand tools from the MUTT[®].

Based on our review of the record, it is clear that the ultimate use of Olympia's MUTT[®] is essentially to cut and chop. The scope of one of the classes or kinds of merchandise subject to the HFHTs Orders is axes, adzes, and similar hewing tools. As the petitioner notes, the definition of the term "hew" is "to cut with blows of a heavy cutting instrument." See Merriam-Webster's Online Dictionary, at www.webster.com. This definition demonstrates that a hewing tool is one that is relatively heavy and is designed to employ the weight of the tool to assist in cutting or chopping. Olympia's brochure identifies the first two uses for MUTT[®] as "cutting" and "chopping." Moreover, all of the other uses identified in the brochure, such as scraping, ice breaking, shingle removal, carpet removal, etc., involve applying force to an object through the use of a sharpened blade. Thus, both tools employ the weight of the tool to cut or chop. Therefore, based upon the record evidence, we find that the MUTT[®] is used for cutting tasks that are very similar to the cutting tasks for which axes and adzes are used.

The Channels of Trade In Which the Product is Sold

Olympia states that MUTTs[®], like HFHTs, are sold by Olympia at wholesale to hardware and DIY stores. Although the same channel of trade is used (*i.e.*, producers sell to wholesalers, who then sell to retail stores), Olympia contends that different departments within retail stores purchase the MUTT[®] and subject HFHTs. According to Olympia, MUTTs[®] are purchased by the gardening and long handle tool section of retail stores while subject HFHTs are purchased by the tool section of the retail stores. Olympia concludes that because retail buyers stock the MUTT[®] and subject HFHTs in different sections of the store, such stores do not consider the MUTT[®] to be interchangeable with subject HFHTs.

In rebuttal, the petitioner first notes that Olympia concedes that both the MUTT[®] and other hand tools are sold by Olympia in the same sales channel - at wholesale to hardware and DIY stores. The petitioner argues that after conceding the point, Olympia attempts to create an

artificial distinction between the two products by alleging that different departments within retail stores buy MUTTs[®] and subject hand tools. The petitioner considers this distinction to be meaningless. According to the petitioner, it is an undisputed fact that MUTTs[®] and HFHTs are sold through the same channels of trade to the same types of customers - hardware and DIY stores for resale to ultimate customers.

We agree with the petitioner that the MUTT[®] and subject HFHTs are sold in the same channel of trade. As Olympia stated, both the MUTT[®] and subject HFHTs are sold by producers to wholesalers, who then sell to retail stores. Regarding Olympia's argument that the MUTT[®] is sold in the gardening or long handle tool section of retail stores, while subject hand tools are sold in the tool section of retail stores, we find the merit of this argument questionable. There are many types of tools subject to the HFHTs Orders that are normally sold in the garden section of hardware and DIY stores. Picks, mattocks, and axes are frequently considered agricultural tools and, for this reason, are more likely to be found in the garden section of a retail store rather than a tool section. For example, see TMC's product brochure contained in its May 28, 2003, response to section A of the Department's antidumping duty questionnaire, at Exhibit 17, where axes are advertised agricultural implements.

The Manner In Which the Product is Advertised and Displayed

Olympia argues that MUTTs[®] and HFHTs are advertised and displayed in different manners. According to Olympia, MUTTs[®] are advertised and displayed in the garden section of the store, with other long handled tools such as hoes, rakes, and shovels. Olympia contends that, unlike HFHTs, MUTTs[®] are displayed in pallet racks or pallet merchandisers.

The petitioner disagrees with Olympia's argument that the MUTT[®] is displayed in a different manner from subject HFHTs. According to the petitioner, Olympia's argument that MUTTs[®] are displayed in the garden section of the store and sold in pallet merchandisers fails to acknowledge that the MUTT[®] is sold in many other parts of the store, and is not restricted to the gardening section. The petitioner points to Olympia's brochure for the MUTT[®] which states that the MUTT[®] is "Multi-Departmental" and "can be cross-merchandised in many departments for its multiple uses." The petitioner claims that Olympia fails to acknowledge that certain subject hand tools can and are sold in the gardening section of the hardware or DIY store.

The Department agrees with the petitioner that the MUTT[®] can be advertised in different parts of a retail store, as evidenced by Olympia's brochure. Novosteel, 128 F Supp. 2d at 730 (description in marketing literature is relevant). Given that Olympia encourages retail stores to "cross merchandise" the MUTT[®] "in many departments for its multiple uses," it is reasonable to assume that the MUTT[®] is equally likely to be found in the tool section and the garden section of hardware and DIY stores.

CONCLUSION

In accordance with 19 C.F.R. § 351.225(k)(2), as discussed above, our review of the record of this scope inquiry and the factual representations made by Olympia and the petitioner supports the conclusion that MUTTs[®], with or without handles, are within the scope of the HFHT Orders. Specifically, we find that the MUTT[®] is a “similar hewing tool,” and is therefore covered by the scope of the antidumping duty order on axes, adzes, and similar hewing tools.

RECOMMENDATION

We recommend that the Department determine that Olympia’s MUTTs[®] (with blades that measure 5"x4", 8"x4", and 9"x7") identified by model numbers 64-386, 64-389, 64-392, 64-393, 64-394, 64-396, 64-397, and 64-398 are within the scope of the antidumping duty order on axes, adzes, and similar hewing tools. If you agree, we will send a letter to interested parties enclosing this ruling and notify CBP of our determination.

Agree ✓

Disagree _____

Lets Discuss _____

Barbara E. Tillman
Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

December 9/2004
Date