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

A-570-803

Scope Inquiry
Public Document
IA/9: CLR

JUL 31 2006

MEMORANDUM FOR: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

FROM: James C. Doyle
Director
AD/CVD Operations, Office 9
Import Administration

SUBJECT: 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 Central Purchasing, LLC. for a Ruling on Gooseneck Claw Wrecking Bar

Summary

On March 9, 2006, Central Purchasing, LLC. ("CPL") requested that the Department of Commerce ("the Department") issue a scope ruling as to whether its imported 17 7/8" gooseneck claw wrecking bar ("gooseneck wrecking bar") is within the scope of the antidumping duty ("AD") order on bars/wedges, one of four classes or kinds of subject merchandise covered by the AD orders on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles ("HFHTs"), from the People's Republic of China ("PRC"). See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China ("HFHT Orders"), 56 FR 6622 (February 19, 1991).

In accordance with 19 CFR 351.225(k)(1), the Department finds that CPL's 17 7/8" gooseneck bar is outside the scope of the order for bars and wedges.

Background

On March 13, 2006, the Department received a letter dated March 9, 2006, from CPL requesting a scope ruling on its 17 7/8" gooseneck wrecking bar ("CPL's Request"). On March 20, 2006, the Department issued a supplemental questionnaire to CPL requesting additional information. On March 31, 2006, Ames True Temper ("Ames"), the Petitioner, submitted its comments on CPL's scope inquiry. On May 11, 2006, the Department received CPL's supplemental response dated May 9, 2006. However, the Department rejected CPL's May 9, 2006, response because of numerous filing deficiencies including no sender's identity, no certificates of company officials or service list attached to each document, and a purported public version that improperly contained information different from the business proprietary version. On May 15, 2006, the Department identified CPL's filing deficiencies and instructed CPL to resubmit its response



after it had corrected all listed deficiencies. CPL did so and resubmitted its response on May 16, 2006.

CPL's Scope Request

CPL asserts that its 17 7/8" gooseneck wrecking bar, which is measured from the tip of one end (the chisel end) to the farthest point at which the bar is curved, does not fall under the scope of the order for bars and wedges. CPL supports its argument by citing the scope description in Heavy Forged Hand Tools (i.e., Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks) from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Orders ("Second Sunset Review"), 70 FR 67451, (Nov. 7, 2005) which describes the scope of the HFHT Orders as:

(1) hammers and sledges with heads over 1.5 kg (3.3 lbs); (2) bars over 18" in length, track tools, and wedges; (3) picks and mattocks; and (4) axes, adzes, and similar hewing tools....

In CPL's Request, CPL describes the tool subject to this request as a "17 7/8" gooseneck claw wrecking bar which is made of a solid, alloy steel bar finished with a gloss black enamel with a goose neck-shaped curve with a forged, slotted claw on one end suitable for pulling nails and a chisel on the other end primarily used for prying apart and dismantling assembled wooden structures. The net weight of the bar is 1.4lbs with hardness of HRC 22."

CPL asserts that the overall length of the gooseneck wrecking bar at issue is 17 7/8". The overall length of 17 7/8" is measured from the distance of the chisel tip to the farthest point at which the bar is curved, but not including the measurement of the bar stock from the chisel end point all around the curve of the gooseneck to the claw. CPL states that this way of measurement is based on the industry standard maintained by the U.S. General Services Administration ("GSA") under Index of Federal Specifications, Standards and Commercial Item Descriptions ("SCID"), document A-A-2566A, May 16, 2002. See CPL's Request at 2. CPL further claims that the standards set forth by SCID are consistently used to measure the length of the bar product throughout the industry. Moreover, CPL claims that the advertisement and display of the gooseneck wrecking bar reflect the distance the consumer could reach with the use of the bar product, because the expectation of the ultimate purchaser in the length of the bar product is the usable distance, the reach of the bar product, and not the measurement of the bar stock from the chisel end point all around the curve of the gooseneck to the claw. Accordingly, CPL argues that its 17 7/8" gooseneck wrecking bar does not fall under the scope of the order for bars and wedges.

The Petitioner's Comments

The Petitioner, Ames, submitted comments on CPL's Request ("Ames Comments") on March 31, 2006. The Petitioner contends that CPL's arguments are without merit and that the

CPL's gooseneck wrecking bar has a total length exceeding 18 inches and therefore is within the scope of the order for bars and wedges. The Petitioner argues that in determining whether a particular product is included within the scope of an antidumping duty order, the Department first considers whether the description of the merchandise contained in the underlying petition, the initial investigation, and the determinations of the Secretary (including prior scope determination) and the International Trade Commission ("ITC") covers the product. If the descriptions are dispositive, the Department must issue the scope ruling based on this information alone. In case that these criteria are not dispositive, the Petitioner notes, the Department will consider the five-factor test established in Diversified Products Corp. V. United States ("Diversified Products"), 572 F. Supp. 883,889 (Ct. Int'l Trade 1983).

The Petitioner maintains that the HFHT Orders, the original petition, and the ITC's determination are clear and unambiguous in their inclusion of all "bars over 18 inches in length." However, because the term "length" was not further qualified in the scope, the Petitioner claims that the Department should interpret it as having its ordinary meaning. Instead of determining the length of a gooseneck wrecking bar by utilizing "industry standards," the Petitioner submits that the Department should determine the length of this type of bar based on its total length, i.e., by measuring the bar from tip to tip. See Ames Comments at pages 2 and 3. Using the total length measurement, the Petitioner argues that CPL's gooseneck wrecking bar exceeds 18 inches and therefore falls within the order for bars and wedges.

To further support its arguments, the Petitioner also makes a reference to the Department's Pry Bars Ruling¹ on 18- and 24-inch pry bars dated March 8, 2001, where the Department rejected a proposal to measure bar length based on "exposed bar length," and determined that the pry bars with handles at issue were within the scope of the order for bars and wedges. The Petitioner maintains that in the Pry Bars Ruling, the Department considered the full length of the bar, and found that the "overall length" of the product falls within the scope of the order for bars and wedges. The Petitioner argues that the Department's acknowledgment that pry bars are "bent at one end, just like other bars covered by the AD order," provides further support for the Petitioner's argument that the overall length of a bar should be measured from tip to tip, including the length of the curve in the bar. See Ames Comments at page 4. Accordingly, the Petitioner claims that the Department should reject CPL's suggestion that gooseneck wrecking bar be measured "from the distance of the tip of the chisel end point to the farthest point at which the bar is curved," just as the Department found the "exposed bar length," cannot determine the length of a bar, as that term is not part of the wording of the scope or a term included in the original petition.

¹ See 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 ("Pry Bar Ruling"), from Thomas F. Futtner, Acting Director, Office 4, Import Administration, to Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, dated March 8, 2001.

Finally, the Petitioner argues that, because the primary and secondary sources are dispositive that pry bars exceeding 18 inches are within the scope of the order for bars and wedges, it is not necessary to examine the Diversified Products criteria to resolve the scope inquiry.

Legal Framework

The regulations governing the Department's antidumping scope determinations are found at 19 CFR 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines 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. This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether the subject merchandise is covered by the order. See 19 CFR 351.225(k)(1).

Conversely, where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: (1) the physical characteristics of the merchandise; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed. 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 evidence before the Department.

In the instant case, the Department has evaluated CPL's request in accordance with 19 CFR 351.225(k)(1) and finds that with respect to length, the descriptions of the products contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC are dispositive with respect to CPL's gooseneck wrecking bar. Therefore, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

Documents and parts thereof from the underlying investigation that the Department deemed relevant to this scope ruling were made part of the record of this determination and are referenced herein. Documents that neither the Department nor the parties placed on the record do not constitute part of the administrative record for this scope determination.

The original Petition, filed by Woodings-Verona Division of the O. Ames Company ("Woodings") on April 4, 1990, describes the covered merchandise under four classification headings, 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, Wedges of Iron or Steel, 3) Picks and Mattocks, Hoes, and Rakes and Parts Thereof, and 4) Axes and Hewing Tools other than Machetes and Parts, Base Metals.

The four classification subheadings listed above provide the scope of this Petition and describe four distinct like product groups (and class or kind of merchandise groups) except that ... (2) bars eighteen inches and under in HTSUS 8205.59.30 are not heavy hand tools and are not subject to investigation.

See Petition at 11.

Also informative is a letter from Woodings to the Department in the original investigations, clarifying the scope of the petition. In that letter, Woodings stated that the scope covers all tools entered under the relevant HTSUS categories, unless the tool is specifically excluded.² See Letter from Petitioner to the Department and to the ITC, April 17, 1990 (emphasis added).

The ITC found 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 . . . ; (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 . . .

The bar tools included in the scope of the investigation include crowbars, wrecking bars, digging bars, and tampers, but exclude bars measuring 18 inches and under in length. The principle product in this group is the crowbar, a relatively long steel bar usually flattened and slightly bent at one or both ends and used as a lever.

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

The scope contained in the Department's HFHT Orders describes HFHT products in terms of their product characteristics, as well as their production process, 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).

² On May 23, 2005, the Department found 8-inch by 8 -inch and 10-inch by 10-inch cast tampers, imported by Olympia Industrial, Inc. to be outside the scope of the orders. On September 22, 2005, following remand, the U.S. Court of International Trade affirmed the Department's determination that cast picks exported by TMC are outside the scope of the order on picks/mattocks from the PRC.

HFHTs include heads for drilling hammers, sledges, axes, mauls, picks, and ... mattocks,; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting 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.... 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 HFHT Orders, 56 FR at 6622; see also Final Determination of Sales at Less Than Fair Value: Heavy Forged Hand Tools from the People's Republic of China, 56 FR 241, 242 (January 3, 1991) ("LTFV").

Analysis

The issue in this instant scope request is to determine whether CPL's gooseneck wrecking bar falls within the HFHT Order on bars and wedges. In order to determine whether CPL's gooseneck wrecking bar falls within that HFHT Order, we need to first determine whether CPL's proposed measurement for the overall length of its gooseneck wrecking bar is consistent with the descriptions of the product contained in the Petition, the initial investigation, and the determinations of the Secretary (including prior scope determination) and the ITC. See 19 CFR 351.225(d) and 351.225(k)(1).

The language in the Petition, the ITC Final, and the HFHT Orders clearly states that bars 18 inches in length and under are to be excluded. CPL argues that, because the gooseneck claw wrecking bar at issue has a measure of 17 7/8", it should therefore be excluded from the order for bars and wedges. However, the Petitioner maintains that the gooseneck wrecking bar at issue is over 18" and should be included in the order for bars and wedges. CPL and the Petitioner reach different conclusions because they differ as to whether the curvature portion of the gooseneck wrecking bar should be considered part of the length. CPL maintains that the length of the gooseneck wrecking bar should be measured from the distance of the chisel tip to the farthest point at which the bar is curved, but not including the measurement of the bar stock from the chisel end point all around the curve of the gooseneck to the claw. By contrast, the Petitioner argues that the length of the gooseneck wrecking bar should be from tip to tip, including the curvature portion of the bar.

The Petitioner states that the Department should essentially ignore "industry standards" for measuring length, and instead measure the total length of the gooseneck wrecking bar from tip to tip, citing the Department's Pry Bars Ruling. However, the Pry Bars Ruling never explicitly addressed the issue of measurement of a gooseneck wrecking bar.

The Webster's dictionary provides the following definition of the word "length:" 1) measurement of the extent of an object along its greatest dimension; 2) a piece of material, often of a standard size, normally measured along its greatest dimension; and 3) the distance or extent from beginning to end as measured in space. Based on the Webster's dictionary, the meaning of length depends on how we define the "greatest dimension" or the distance from "beginning to end." Although the Petitioner argues that the ordinary understanding of the word "length" includes measurement of the curvature, we find the plain meaning of the word length does not include measurement of the curvature. This is consistent with the GSA Index of Federal Specifications, SCID, document A-A-2566A, May 16, 2002. We note that the illustration of the measuring standard set forth by SCID at page 2 of A-A-2566A contains a gooseneck wrecking bar which is bent at one end (the chisel end). In measuring the overall length, however, SCID does not actually measure the bent portion of the bar. See Attachment 1 at page 2. This way of measurement is consistent with CPL's argument that the ultimate purchaser's expectation regardubg the length of the bar product is the usable distance, the reach of the bar product, and not the measurement of the bar stock from the chisel end point all around the curve of the gooseneck to the claw. Furthermore, the ITC Final noted that bar tools measuring 18 inches and over in length and usually flattened and slightly bent at one or both ends are used as levers. See ITC Final at A-3. To the extent that a long steel shaft with specifically formed ends may be adapted for specific use, e.g., used as a lever, it appears that the relevant length for a gooseneck wrecking bar to serve as a lever is the longest portion of the bar measured from one tip to the edge of the bar where it curved. This way of measurement is consistent with the standard set forth by SCID and suggested by CPL.

We find it inappropriate to disregard the "industry standard" that is recognized in the hand tools industry as set forth by SCID, and resort to Petitioner's "ordinary meaning," by interpreting the overall length as the length from tip to tip, i.e., including the curved, gooseneck-shaped portion of the bar. Rather, we agree with CPL on the following: (1) the industry standard set forth by SCID is consistently used to measure the length of the bar product throughout the industry, and (2) the expectation of the ultimate purchaser regarding the length of the bar product is the usable distance, the reach of the bar product, and not the measurement of the bar stock from the chisel end point all around the curve of the gooseneck to the claw. It is clear from the standard set forth by SCID that the overall length of the gooseneck wrecking bar at issue is a measure of distance from the tip of the chisel end to the farthest portion of the bar where it begins to curve. See Attachment 1 at page 2.

We also disagree with the Petitioner's argument that the Department should follow its decision in Pry Bars Ruling and reject CPL's proposed measuring methodology because CPL's methodology is not part of the wording of the scope or a term included in the original Petition. The Petitioner misunderstands the Pry Bars Ruling. In the Pry Bars Ruling, the requesters argued that their 18" pry bar, when measured without handle, has an "exposed bar length" of 17.8 inches and therefore is outside the scope of the order for bars and wedges. The Department determined that the documentation provided by one requester indicated that, when including the portion of the bar


embedded within the handle, the bar was 21.9 inches long with 14.8 inches of the bar exposed.³ Based on this record evidence, the Department concluded that the full length of the bar itself was 21.9 inches and thus, with or without the handle, the bar already exceeded the minimum length of covered merchandise. Therefore, the Department found, the overall length of the product fell within the dimensions covered by the scope of the AD order. See Pry Bar Ruling at page 9. In other words, the Department's decision in the Pry Bar Ruling was based on the fact that the actual bar length exceeded the minimum length of the covered merchandise, not because the "exposed bar length" was not part of the wording of the scope or a term included in the original petition or because the Department was applying a particular meaning to the word length.

In the current scope inquiry request, CPL's 17 7/8" gooseneck wrecking bar is less than the minimum length of the covered merchandise described in the HFHT Orders, the ITC Final, and the Petition. In addition, the Department agrees with CPL's proposed method of measuring the overall length of the bar at issue because such a measurement is consistent with the standard set forth by SCID. Moreover, CPL's proposed measurement is consistent with the ultimate purchaser's expectation because for bar to serve as a lever, the relevant length is the usable distance, the reach of the bar product, rather than the measurement of the bar stock from the chisel end point all around the curve of the gooseneck to the claw. Moreover, as CPL points out, the advertisement and display of the gooseneck wrecking bar reflects the distance the consumer could reach with the use of the bar product.

Recommendation

Based on the preceding analysis, we recommend that the Department find that CPL's 17 7/8" gooseneck wrecking bar falls outside the scope of the order for bars and wedges. If you agree, we will send the attached letter to the interested parties, and will notify CBP of our determination.

Agree Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

7/27/06

Date

³ The total length of the product from the end of the handle to the tip of the bar was 25 inches.