



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

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A-570-803

Scope Review

Public Document

IA/AD/CVD/9: JEH

By Electronic Mail Notification

To All Interested Parties:

On February 22, 2007, the Department of Commerce ("the Department") received a request from Cummins Industrial Tools ("Cummins") for a scope ruling on whether the "10 Ton Log Splitter" is covered by the antidumping duty orders on heavy forged hand tools from the People's Republic of China. Additionally, on March 26, 2007, the Department received a request from Katten Muchin Rosenman LLP on behalf of Agri-Fab, Inc. ("Agri-Fab") for a scope ruling on whether the "Tow Behind Log Splitter" is covered by the antidumping duty orders on heavy forged hand tools from the People's Republic of China.

In accordance with 19 CFR 351.225(k)(1)(2004), the Department has determined that the "10 Ton Log Splitter" and the "Tow Behind Log Splitter" are outside the scope of the orders.

Enclosed is a memorandum containing the Department's analysis. We will notify U.S. Customs and Border Protection of this decision. If you have any questions, please contact Julia Hancock at (202) 482-1394.

Sincerely,

Alex Villanueva
Program Manager, Office 9
Import Administration

Enclosure





A-570-803
Scope Review
Public Document
IA/AD/CVD/9: JEH

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

FROM: James C. Doyle
Director, Office 9
Import Administration

SUBJECT: Final Scope Rulings: Antidumping Duty Order on Heavy Forged
Hand Tools, Finished or Unfinished, With or Without Handles,
From the People's Republic of China

Summary

On February 22, 2007, the Department of Commerce ("the Department") received a request from Cummins Industrial Tools ("Cummins") for a scope ruling to determine whether the "10 Ton Log Splitter" is included within the scope of the antidumping duty orders on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles ("HFHTs") from the People's Republic of China ("PRC"). Additionally, on March 26, 2007, the Department received a request from Agri-Fab, Inc. ("Agri-Fab") for a scope ruling to determine whether the "Tow Behind Log Splitter" is included within the scope of the antidumping duty orders on HFHTs from the PRC. See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the PRC, 56 FR 6622 (February 19, 1991) ("the HFHTs Orders"). In accordance with 19 CFR 351.225(k)(1), the Department finds that the "10 Ton Log Splitter" and the "Tow Behind Log Splitter" are not within the scope of the HFHTs Orders.

Background

On February 22, 2007, the Department received a letter from Cummins requesting a scope ruling on whether the "10 Ton Log Splitter," imported by Cummins from the PRC, is covered by the HFHTs Orders. On March 26, 2007, the Department extended the deadline for issuing the ruling on Cummins' scope request by thirty days to May 9, 2007. Additionally, on March 26, 2007, the Department received a letter from Katten Muchin Rosenman LLP on behalf of Agri-Fab requesting a scope ruling on whether the "Tow Behind Log Splitter," imported by Agri-Fab from the PRC, is covered by the HFHTs Orders.



On April 19, 2007, the Department requested additional and clarifying information from Cummins and Agri-Fab regarding their respective scope requests. On April 25, 2007, the Department granted Cummins an extension of seven days to respond to the Department's supplemental questionnaire. On April 26, 2007, Agri-Fab responded to the Department's supplemental questionnaire.

On May 2, 2007, Cummins responded to the Department's supplemental questionnaire. On May 8, 2007, the Department extended the deadline for issuing Cummins' scope ruling to June 1, 2007. Additionally, on May 8, 2007, the Department extended the deadline for issuing Agri-Fab's scope ruling to June 1, 2007.

No other interested parties submitted comments regarding the scope requests submitted by Agri-Fab and Cummins.

Agri-Fab's Request

In its scope request, Agri-Fab requests that the Department find that its imported log-splitting device, known as the "Tow Behind Log Splitter," is outside the scope of the HFHTs Orders. Agri-Fab states that the "Tow Behind Log Splitter" weighs 105 pounds with dimensions of 60 inches by 18 inches by 16 inches. Because of the product's weight, Agri-Fab notes that "Tow Behind Log Splitter" is intended to be towed by a vehicle, such as an all-terrain vehicle ("ATV").

Agri-Fab describes the "Tow Behind Log Splitter" as a mechanical log-splitter that utilizes an integral hydraulic unit to split logs. The log-splitting device consists of a base with cradle to hold logs in place and a welded wedge, a hydraulic mechanism with operating handles to provide force to split the logs, and two wheels with pneumatic tires and a front hitch and rear hitch.

Agri-Fab argues that the "Tow Behind Log Splitter" is not classifiable as a hand tool for tariff classification purposes. Instead, Agri-Fab contends, the "Tow Behind Log Splitter" is classified as a "machine tool... for working wood... log splitter," under Harmonized Tariff System ("HTSUS") subheading 8465.96.0015.

Additionally, Agri-Fab states that the "Tow Behind Log Splitter" is distinguishable from the "Mean Green Splitting Machine," which was found to be within the scope of the HFHTs Orders. See Memorandum for Gary Taverman, Acting Deputy Assistant Secretary, from James C. Doyle, Office Director, Office 9, SUBJECT: Final Scope Ruling: Antidumping Duty Order on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China, (October 14, 2005) at 1 ("Mean Green Scope Ruling"). Agri-Fab notes that the "Mean Green Splitting Machine" does not contain an integral cradle, pneumatic wheels, and a hydraulic mechanism, which are all found in the "Tow Behind Log Splitter."

Furthermore, Agri-Fab argues that the "Tow Behind Log Splitter" is not within the scope of the HFHTs Orders because the HFHTs Orders only cover forged hand tools. Agri-Fab states that the wedge component of the "Tow Behind Log Splitter" is not forged but made of stamped steel plates that are welded together to form the wedge. Additionally, Agri-Fab states that the Court of International Trade ("CIT") found, in Tianjin, that only forged hand tools are within the scope of

the HFHTs Orders. See Tianjin Machinery Import & Export Corp. v. United States, 394 F. Supp. 2d 1369, 1373 (CIT 2005) (“Tianjin”).

Finally, Agri-Fab states that the “Tow Behind Log Splitter” is physically distinct from a forged wedge and is therefore not within the scope of the HFHTs Orders. Agri-Fab states that, because the wedge of the “Tow Behind Log Splitter” is welded, the wedge is hollow, which precludes it from being used with a maul (used in conjunction with a forged wedge). Additionally, Agri-Fab states that the welding process results in the wedge component of the “Tow Behind Log Splitter” being large in size and thus, too large to be used independently by hand.

Cummins’ Request

In its scope request, Cummins requests that the Department find that its imported log-splitting device, known as the “10 Ton Log Splitter,” is outside the scope of the HFHTs Orders. Cummins states that the “10 Ton Log Splitter” weighs 108 pounds with dimensions of 37 inches by 42 1/8 inches. Additionally, Cummins states that the weight of the “10 Ton Log Splitter” precludes it from being a “hand tool” and from being easily moveable by hand.

Cummins states that the “10 Ton Log Splitter” consists of a manually operated two-speed pump, which has two operating levers, piston rod, and wedge, that are used to split the logs. The log-splitting device also has a pressure release valve and two-wheels, which enable the product to be easily maneuvered.

Additionally, Cummins argues that the “10 Ton Log Splitter” is not within the scope of the HFHTs Orders because, unlike the “Mean Green Splitting Machine,” the “10 Ton Log Splitter” is welded and not forged. See Mean Green Scope Ruling. In contrast to the “Mean Green Splitting Machine” at issue in the Mean Green Scope Ruling, which found a forged wedge within the scope, Cummins states that the “10 Ton Log Splitter” is produced through welding and stamping processes. This results in a product that is distinct from a forged wedge because the wedge of the “10 Ton Log Splitter” is hollow and cannot be used with a maul as there is no striking surface.

Legal Framework

The regulations governing the Department’s antidumping scope determinations are found at 19 CFR 351.225 (2007). 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 U.S. International Trade Commission (“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 or not 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 Agri-Fab's and Cummins' respective scope requests in accordance with 19 CFR 351.225(k)(1) and finds that 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 Agri-Fab's "Tow Behind Log Splitter," and Cummins' "10 Ton Log Splitter." Therefore, for both the "Tow Behind Log Splitter" and the "10 Ton Log Splitter," 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.

In its petition of April 4, 1990, the domestic industry described 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 Antidumping Petition of Woodings-Verona Tool Works, Inc. for the Imposition of Antidumping Duties on Heavy Forged Hand Tools, with or without Handles, from the People's Republic of China, (April 4, 1990) ("Petition"), at 11.

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 Department's HFHTs Orders 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 wood splitting wedges** (emphasis added). See HFHTs Orders.

The ITC adopted a similar definition of "like product" subject to its determination, noting:

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 Report") at A-3. The ITC Final Report mentions wedges. Id., at 15.

Also of relevance to the present scope inquiries are the CIT's findings, in Tianjin, the Department's Cast Picks Remand, and the Department's Cast Tamper Scope Ruling, where the CIT and the Department specifically addressed whether a product that is not forged is subject to the HFHTs Orders. See Tianjin, 394 F. Supp. 2d at 1374; Remand Determination: Tianjin Machinery Import & Export Corporation v. United States, Court No. 03-00732 (July 20, 2004) ("Cast Picks Remand"); Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary, from James Doyle, Office Director, AD/CVD Operations, Office 9, 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 Olympic Industrial Inc., for a Scope Ruling on Cast Tampers, (May 24, 2005) at 11 ("Cast Tamper Scope Ruling"). In Tianjin, the CIT found: "The scope language at issue consistently identified the merchandise subject to investigation as "forged" hand tools. . . and stating unambiguously that HFHTs were manufactured through a hot forge operation. . . and does not refer to any production of a hand tool by casting or by any manufacturing process that is distinct from a forging process." See Tianjin, 394 F. Supp. 2d at 1374. The Department's Mean Green Scope Ruling is also relevant to the present scope inquiries because the product, the "Mean Green Splitting Machine," which was produced by forging, was found to be within the scope of the HFHTs Orders. See Mean Green Scope Ruling, at 7.

Analysis

A. *Tow Behind Log Splitter*

We find that Agri-Fab's "Tow Behind Log Splitter" is outside the scope of the HFHTs Orders.

As noted above, the scope of the HFHTs Orders includes HFHT products described as wedges. Specifically, the scope language states:

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").

See HFHTs Orders (emphasis added). No party has disputed the fact that the "Tow Behind Log Splitter" being imported by Agri-Fab is, in fact, a wedge.

The scope of the HFHTs Orders, however, does exclude certain products from being covered by these orders. The scope language states that, “{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. Since none of these exclusions pertain to wedges, we conclude that the scope does not specifically exclude any wedge from being subject to the HFHTS Orders.

Additionally, the scope of the HFHTs Orders does include a sentence that provides illustrative examples of various types of tools contained within the four broad classes or kinds.¹ The tools identified in the HFHTs Orders are **examples** of the products covered by the broader class or kind of merchandise subject to each of the four AD orders. However, these examples do not actually establish the characteristics that define subject merchandise of the HFHTs Orders. See Cast Picks Remand, at 7; Cast Tamper Scope Ruling, at 10-11.

Having established that wedges are included in the scope of the order on bars/wedges, and that none of the specific exclusions pertain to wedges, we considered that the “Tow Behind Log Splitter” imported by Agri-Fab is manufactured through a welding production process. We reviewed the scope language to determine whether it may be interpreted to include welded wedges. Consistent with the CIT’s findings, in Tianjin, and in the Department’s Cast Picks Remand and Cast Tamper Scope Ruling, we find that the product descriptions contained in the scope of the HFHTs Orders to be dispositive, and the Petition and the ITC Final Injury Report are consistent with the HFHTs Orders.

In the Cast Picks Remand, the Department noted that 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 (emphasis added). 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. . .” Id. 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,” 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.” See Cast Picks Remand, at 7; Cast Tamper Scope Ruling, at 10-11.

Although the Department’s exclusion of certain products from the scope of the HFHTs Orders has been limited to products that were manufactured through casting, in Tianjin, the CIT found: “the scope language in the HFHT Orders. . . does not refer to any production of a hand tool by casting or by any manufacturing process that is distinct from a forging process.” See Tianjin, 394 F. Supp. 2d at 1374. Accordingly, the scope of the HFHTs Orders is limited to products that

¹ “HFHTs include heads for drilling hammers, sledges, axes, mauls, bars, 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 wood splitting wedges.” See HFHT Orders.

are manufactured through a forging process, and not products that are manufactured from production processes distinct from forging.

By contrast, Agri-Fab stated that in the welding production process, which the “Tow Behind Log Splitter” undergoes, “the steel is stamped into required shape as opposed to a shearing process, none of the components of the wedge assembly is heated during production, no dies or forging equipment is used to produce either the wedge assembly or the complete “Tow Behind Log Splitter,” and the final shape of the wedge is the result of welding three plates together to produce the desired wedge shape.” See Agri-Fab’s April 26, 2007, Submission, at Exhibit 6. Furthermore, Agri-Fab noted that none of the processes identified in the HFHTs Orders used to describe a “hot forge operation” are used in the production of the “Tow Behind Log Splitter.” See id., at 3; HFHTs Orders. Accordingly, we find that forging and welding (which is the production process used to manufacture the “Tow Behind Log Splitter”) are two separate and distinct production processes. As such, because Agri-Fab’s “Tow Behind Log Splitter” is not made through a “hot forge operation,” the Department finds that the “Tow Behind Log Splitter” is not subject to the HFHTs Orders.

Furthermore, we find that the evidence on the record of this scope inquiry indicates that Agri-Fab’s “Tow Behind Log Splitter” is not comparable to the “Mean Green Splitting Machine.” As discussed above, Agri-Fab’s “Tow Behind Log Splitter” is not manufactured through a “forge operation.” See Mean Green Scope Ruling, at 7. Accordingly, we find that the “Tow Behind Log Splitter” is not similar to the “Mean Green Splitting Machine” and thus, is not within the scope of the HFHTs Orders.

B. 10 Ton Log Splitter

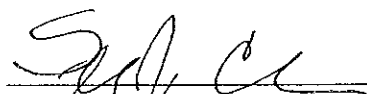
Similar to the analysis discussed above for the “Tow Behind Log Splitter,” we also find that Cummins’ “10 Ton Log Splitter” is produced through a non-forged operation. See Cummins’ May 3, 2007, Submission, at 3. The evidence on the record of this scope inquiry indicates that Cummins’ “10 Ton Log Splitter” undergoes the following production processes: (1) the steel plates are stamped and not sheared; and (2) the steel plates are then welded together to form the wedge component. Id. Therefore, because Cummins’ “10 Ton Log Splitter” is also not made through a “forge operation,” the Department finds that it is not subject to the HFHTs Orders.

RECOMMENDATION

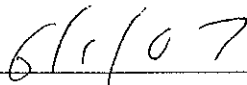
Based on the preceding analyses, we recommend that the Department find that Agri-Fab's "Tow Behind Log Splitter" and Cummins' "10 Ton Log Splitter" are outside the scope of the HFHTs Orders. If you agree, we will send the attached letter to the interested parties, and will notify U.S. Customs and Border Protection ("CBP") of our determination.

Agree

Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration



Date