



A-570-803

Scope Inquiry  
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September 11, 2008

MEMORANDUM FOR:

Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

FROM:

James C. Doyle   
Director, Office 9  
for Import Administration

SUBJECT:

Scope Determination: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China ("PRC")

Summary

On May 15, 2008, New Buffalo Corporation ("New Buffalo") requested that the Department of Commerce ("the Department") find the "4 Ton Electric Log Splitter" to be outside the scope of the antidumping duty order of heavy forged hand tools, finished or unfinished, with or without handles, from the PRC. See Antidumping Duty Order: Heavy Hand Forged Tools, Finished or Unfinished With or Without Handles From the People's Republic of China (Order), 56 Fed. Reg. 6622 (Feb. 19, 1991).

The language of the Order excludes tools created by any means distinct from a forging process. The Wedge contained within this product was welded, not forged and the photograph submitted by New Buffalo makes it clear that the product is an electric machine tool and not a "hand tool." Therefore, in accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that the "4 Ton Electric Log Splitter" is outside the scope of the Order.

Background

On May 15, 2008, New Buffalo filed a request that the Department find the "4 Ton Electric Log Splitter" to be outside the scope of the Order. See New Buffalo's Scope Inquiry dated May 15, 2008. New Buffalo also provided a picture and physical description of the product. See New Buffalo Scope Inquiry. On July 18, 2008, the Department issued New Buffalo a supplemental questionnaire in order to obtain further information on the physical characteristics of the "4 Ton Electric Log Splitter." New Buffalo submitted its response on August 1, 2008.



### Applicable Regulations

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

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: i) the physical characteristics of the product; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is advertised and displayed. These factors are known commonly as the Diversified Products criteria. 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. See Diversified Products Corp. v. United States, 572 F. Supp. 883 (CIT 1983) ("Diversified Products").

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

### COMMENTS

New Buffalo claims that the "4 Ton Electric Log Splitter" does not meet any of the definitions of hammers/sledges, bars/wedges, picks/mattocks, or axes/adzes as defined in the heavy forged hand tools Order. New Buffalo points out that the wedge contained within the electric-powered machine was formed by a welding rather than by a forging process. Furthermore, New Buffalo argues that this product is an electric machine tool, not a hand tool. Finally, New Buffalo states the following:

heavy forged hand tools are provided for under the following HTSUS subheadings: 8205.20.60, 8205.59.30, 8201.30.00 and 8201.40.60. The 4-ton electric log splitter is classified under 8465.96.0015. The log splitter cannot be classified under Chapter 82 per section XV note 1(f) of the HTSUS, which excludes articles of section XVI (machinery, mechanical appliances and electrical goods).

Ames True Temper, the Petitioner, did not submit comments regarding this scope request.

## Analysis

The issue presented by this scope inquiry is whether the "4 Ton Electric Log Splitter" imported by New Buffalo falls within the scope of the Order. As noted above, our initial basis for determining whether a product is included within the scope of an order is the descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary and the ITC. See 19 CFR 351.225(d) and 351.225(k)(1).

The Order defines the scope as follows:

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

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

The Department has reviewed the description of the physical characteristics of the "4 Ton Electric Log Splitter" and examined the photographs of the product, as submitted by New Buffalo. We find that the product does not meet any definition of any of the heavy forged hand tools defined by the Order. Moreover, the wedge component of the "4 Ton Electric Log Splitter" that may place this product within the scope of the Order is welded. Consistent with the determination in Tianjin Machinery Import & Export Corp. v. United States, 394 F. Supp. 2d 1369, 1373 (CIT 2005), the Department finds the scope language to exclude tools created by any means distinct from a forging process.

Finally, we note that the "4 Ton Electric Log Splitter" is an electric-powered machine. As New Buffalo pointed out, HTSUS language prevents machines and electric goods from being classified as hand tools. The photographs and descriptions show that the log splitter cannot be used as a hand tool.

