



August 27, 2010

MEMORANDUM FOR: Edward C. Yang
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

SUBJECT: Heavy Forged Hand Tools from the People's Republic of
China ("PRC"): Olympia Tools International, Inc.
("Olympia") Final Scope Ruling on the Stubby Bar

SUMMARY

In accordance with 19 CFR 351.225(k)(1), the Department of Commerce ("Department") has determined that the Olympia's Stubby Bar is outside the scope of the antidumping duty order of heavy forged hand tools from the PRC. 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) ("HFHT Order").

BACKGROUND

On July 19, 2010, Olympia requested that the Department determine that its Stubby Bar is outside the scope of the HFHT Order because no part of the stubby bar is produced using a forging process, and as such, is excluded from the scope of the HFHT Order. See Olympia's Scope Inquiry, dated July 19, 2010.¹ On July 27, 2010, Petitioner² submitted rebuttal comments on Olympia's scope inquiry. On August 3, 2010, the Department issued a supplemental questionnaire to Olympia requesting more information on the production process.

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

¹ Olympia also requested a ruling for a similar bar with forged edges. See Olympia's Scope inquiry, dated July 16, 2010, at 4. However, Olympia did not provide enough information on this bar for the Department to make a determination at this time.

² Ames True Temper, Inc.



351.225(k)(1). 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 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.

COMMENTS

Olympia

Olympia contends that the plain language of the HFHT Order excludes cast products and that its Stubby Bar should thus be excluded. Olympia argues that the HFHT Order, which states that “HFHT 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,” is unequivocal in excluding all cast hand tools. In support, Olympia cites to Cast Tampers³ and Cast Picks,⁴ both of which were found to be outside the scope of the HFHT Order.

Petitioner

Petitioner argues that the Department should deny Olympia’s request for a scope ruling because Olympia does not appear to have imported or have begun production of the Stubby Bar. Also, Petitioner argues that Olympia has failed to describe the product as required by 19 CFR 351.225(c). Further, Petitioner contends that should the Department decide to initiate the scope ruling, the Department should find the Stubby Bar within the scope because Olympia has failed to provide support for its assertion that the Stubby Bar is produced through a casting process. While Petitioner agrees that the scope language applies only to merchandise produced through a forging process, Petitioner argues that Olympia has not demonstrated that its Stubby Bar is cast.

³ See Notice of Scope Rulings, 70 FR 55110 (September 20, 2005) (“Cast Tampers”).

⁴ See Notice of Scope Rulings, 71 FR 5646 (February 2, 2006) (“Cast Picks”).

ANALYSIS

A. Regulatory Framework

The issue presented by this scope inquiry is whether the Stubby Bar imported by Olympia is outside the scope of the HFHT Order. As noted above, our initial basis for determining whether a product is outside the scope of the order is the description 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 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 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, dated April 4, 1990, at 14. Indeed, the Petition includes multiple references to “heavy forged hand tools,” and, for example, calculates normal value by deriving an amount attributable to the labor costs associated with forging.

The HFHT Order defines the scope as follows:

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

HFHTs include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting 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 (emphasis added).

See HFHT Order, 56 FR 6622.

The Department previously found that cast tampers imported by Olympia Industrial, Inc., are outside the scope of the HFHT Order. See Cast Tampers and accompanying Memorandum to Barbara Tillman, Acting Deputy Assistant Secretary for Import Administration, through 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: Final Scope Ruling – Request by Olympia Industrial Inc., for a Scope Ruling on Cast Tampers, dated May 23, 2005.

Additionally, in a similar case, the Department found cast picks exported by Tianjin Machinery Import & Export Corporation are outside the scope of the HFHT Order. See Cast Picks and accompanying Results of Redetermination Pursuant to Court Remand, Tianjin Machinery Import & Export Corporation v. United States and Ames True Temper, Court No. 03-00732. This was upheld by the Court of International Trade.⁵

B. Application of Regulatory Framework

After considering the Petition, the HFHT Order, and prior scope rulings, the Department can make its determination using a k(1) analysis. We disagree with Petitioner that we should deny the scope request because the Olympia has not stated whether the Stubby Bar has been imported. The Department's current practice on issuing scope rulings does not require that the product be imported.⁶ The product only has to be produced, as the Department does not issue scope rulings on purely hypothetical products. Olympia has demonstrated in its original request and in its supplemental response that the Stubby Bar has been produced by providing the producer's name and address, a description of the production process, photographs of the production process, the HTS number of the product, and a sample of the product.

We also disagree with Petitioner that Olympia did not provide a sufficient product description for the Department to be able to determine if the Stubby Bar is cast. As explained above, in response to a supplemental questionnaire, Olympia provided further information on the Stubby Bar, including narrative and photographs, along with a product sample. The pictures provided illustrate the production of the chisel and gooseneck molds, as well as the molten liquid steel being poured into the molds. Upon reviewing Olympia's supplemental response and product sample, we have determined that the Stubby Bar is produced using a casting process because: (1) the photographs of the production process demonstrate that liquid steel is poured into molds; and (2) visual inspection of the Stubby Bar indicates the end pieces were produced from liquid steel being poured into sand molds rather than a forging process. Therefore, we find that Olympia's Stubby Bar is produced through a casting process, making it outside the scope of the HFHT Order.

⁵ See Tianjin Machinery Import & Export Corporation v. United States, and Ames True Temper, 394 F.Supp. 2d 1369 (CIT 2005).

⁶ See Antidumping and Countervailing Duty Proceedings; Document Submission Procedures; APO Procedures, 73 FR 3634 (January 22, 2008) at 3639.

CONCLUSION

In summary, our review of the record of this scope inquiry in accordance with 19 CFR 351.225(k)(1) supports the conclusion that Olympia's Stubby Bar is outside of the scope of the HFHT Order because Olympia's Stubby Bar is produced through a casting process and therefore does not meet the description of hand tools subject to the HFHT Order; and, as such, is outside the scope's definition of HFHTs.

RECOMMENDATION

For the reasons described above, and in accordance with 19 CFR 351.225(k)(1), the Department finds that Olympia's Stubby Bar is excluded from the scope of the HFHT Order. If you agree, we will send a letter to interested parties enclosing this ruling and notify the U.S. Customs and Border Protection of our final decision.

Agree ✓ Disagree _____

 Edward C. Yang
Edward C. Yang
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

 8/27/10
Date