



June 6, 2011

MEMORANDUM FOR: Christian Marsh
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"): Lucky Distributing, Inc. ("Lucky") Final
Scope Ruling on the Smart-Splitter

SUMMARY

In accordance with 19 CFR 351.225(k)(1), the Department of Commerce ("Department") has determined that Lucky's Smart-Splitter 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 May 4, 2011, Lucky requested that the Department determine that its Smart-Splitter is outside the scope of the HFHT Order because no part of the Smart-Splitter is produced using a forging process, and as such, it is excluded from the scope of the HFHT Order. See Lucky's Scope Inquiry, dated May 4, 2011. No other party submitted comments.

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). 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).



COMMENTS

Lucky

Lucky contends that the plain language of the HFHT Order excludes cast products and that its Smart-Splitter should thus be excluded. Lucky argues that, according to its production specifications, the Smart-Splitter is made up of: (1) a cast steel splitting part, which includes a wedge, handle, and splitting edge, cast together as one piece using an “investment casting” process; (2) a steel tube that is welded to the cast wedge part; (3) a moveable steel rod that is inserted into the tube to allow the wedge to move up and down; (4) a steel, machine manufactured striking weight; (5) a steel rod that is attached to the wedge part to allow the striking weight to move up and down; (6) nylon washers to reduce the impact between the striking weight and splitting wedge; and, (7) a stop nut. Lucky states that the production process is as follows: 1) investment casting of the axe part; 2) machining of the axe head; 3) hardening of the axe part; 4) welding the tubes and axe; 5) powder coating the axe part; and, grinding the axe wedge. Therefore, Lucky maintains, no part was manufactured through the forging process. In addition, Lucky provides declarations from the Smart-Splitter patent holder, intermediaries, and an inventory control manager attesting that the Smart-Splitter is made through the casting process. Further, Lucky also provides a chemical, radiographic (X-Ray), microstructure, and macro-etch analysis conducted by Professional Services Industries, Inc. (“PSI”), demonstrating that the Smart-Splitter was manufactured through steel casting and not forging. See Lucky’s scope request at Exhibit D. Also, in support, Lucky cites to Cast Tampers,¹ in which hand tools produced via a casting process were found to be outside the scope of the HFHT Order.

ANALYSIS

A. Regulatory Framework

The issue presented by this scope inquiry is whether the Smart-Splitter imported by Lucky 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

¹ See Notice of Scope Rulings, 70 FR 55110 (September 20, 2005), 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 (“Cast Tampers”).

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 hand tools produced via a casting process are outside the scope of the HFHT Order. See Notice of Scope Rulings, 76 FR 10558 (February 25, 2011), and accompanying Memorandum to Edward C. Yang, 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 Tools International, Inc., for a Scope Ruling on Stubby Bar, dated August 27, 2010. See also Cast Tampers.

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 Picks² and accompanying Results of Redetermination Pursuant to Court Remand, Tianjin Machinery Import

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

& Export Corporation v. United States and Ames True Temper, Court No. 03-00732. This was upheld by the Court of International Trade.³

B. Application of Regulatory Framework

After considering the Petition, the HFHT Order, and prior scope rulings, the Department can make its determination under 19 CFR 351.225(k)(1). Lucky has demonstrated in its request that the Smart-Splitter has been produced by providing proof of importation, a description of the production process, photographs of the production process, and the HTS number of the product. Upon reviewing the evidence submitted in Lucky's request, we have determined that the Smart-Splitter was produced using a casting process. This conclusion is supported by the declarations provided by Lucky in addition to the production specifications and process described above. Lastly, the chemical, microstructure, and macro-etch analyses conducted by PSI demonstrate that Lucky's Smart-Splitter was produced by steel casting and not forging. Therefore, based on a review of the above evidence, we find that Lucky's Smart-Splitter is produced through a casting process, making it outside the scope of the HFHT Order.

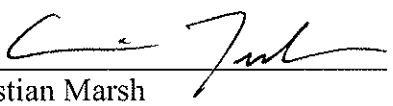
CONCLUSION

In summary, our review of the record of this scope inquiry in accordance with 19 CFR 351.225(k)(1) supports the conclusion that Lucky's Smart-Splitter is outside of the scope of the HFHT Order because Lucky's Smart-Splitter 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 Lucky's Smart-Splitter 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 U.S. Customs and Border Protection of our final decision.

Agree ✓ Disagree _____



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

6/6/11

Date

³ See Tianjin Machinery Import & Export Corporation v. United States, and Ames True Temper, 394 F. Supp. 2d 1369, 1377 (CIT 2005).