



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

AUG 16 1993

A-570-803
Scope Review
Public Document
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MEMORANDUM FOR: Joseph A. Spetrini
Deputy Assistant Secretary
for Compliance

THROUGH: Roland L. MacDonald, Director *WAK for*
Office of Agreements Compliance

FROM: Holly A. Kuga, Director *WAK*
Office of Antidumping Compliance

SUBJECT: Final Scope Ruling -- Antidumping Duty Orders on
Heavy Forged Hand Tools, Finished or Unfinished,
With or Without Handles from the People's
Republic of China: Forrest Tool Company

1. SUMMARY:

On September 18, 1992, Forrest Tool Company (Forrest Tool) requested that the Department of Commerce (the Department) issue a scope ruling clarifying whether a certain product, the Max Multi Purpose Ax (the Max), is 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).

On October 29, 1992, the Department initiated a formal scope inquiry pursuant to section 353.29(b) of the Department's regulations. On November 18, 1992, we received comments from the law firm Wiley, Rein & Fielding on behalf of Woodings-Verona Tool Works, Inc. (Woodings-Verona), the petitioner. Forrest Tool failed to provide initial comments. Forrest Tool did, however, submit rebuttal comments on December 14, 1992, pursuant to an extension by the Department.

On March 22, 1993, the Department requested additional comments in order to address the issue of whether the Max is within the scope of the subject orders. The Department set a deadline of March 31, 1993, for receipt of the comments. We granted Woodings-Verona an extension and received its timely comments on April 5, 1993.



However, because the Department did not receive Forrest Tool's comments until the day after the March 31, 1993 deadline, and insofar as Forrest Tool had not sought an extension, the Department has rejected and returned Forrest Tool's comments pursuant to sections 353.29(d)(2) and 353.31 of the Department's regulations.

Because the Department found the descriptions of the merchandise contained in the petition, the initial investigation and the determinations of the Department and the International Trade Commission (ITC) not to be dispositive of whether the Max is within the scope of the subject orders, we considered additional criteria in accordance with section 353.29(i)(2) of the Department's regulations. Based on the analysis of these criteria, the Department determines that the Max is within the scope of the orders, and, in particular, the order covering axes, adzes, and similar hewing tools.

2. BACKGROUND:

a. Scope Descriptions:

In its antidumping duty orders, the Department defined the scope of the investigations 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 and 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 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.... 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.

Antidumping Duty Orders: Heavy Hand Forged Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China, 56 FR 6622, February 19, 1991.

In describing the subject merchandise in its final determinations, the ITC noted that:

- (1) Hammers, sledges, and mauls are "striking tools," with hammers and sledges used for driving stakes, wedges or other objects, while wood splitting mauls are intended primarily to split wood without the use of wedges;
- (2) bars and wedges are "bar tools," including crowbars, wrecking bars, digging bars, and tampers that are over 18 inches in length;
- (3) picks and mattocks are "digging tools," generally used for digging in hard and relatively soft soil, respectively;
- (4) axes and adzes are "hewing tools," generally grouped into large axes and special-purpose axes, with the former manufactured with either two cutting edges (double bit) or a single cutting edge (single bit), intended primarily for chopping wood, and the latter designed to function as two tools (such as a single-bit axe with an adze-shaped grubbing blade on the back designed for digging, prying, or chopping).

Heavy Forged Hand Tools from the People's Republic of China, Inv. No. 731-TA-457, USITC Publication 2357, February 1991, at A-3-A-4.

b. Request:

On September 18, 1992, Forrest Tool Company filed a scope ruling request covering its product, the Max. (See Forrest Tool's Request for Scope Ruling on Heavy Forged Hand Tools from the People's Republic of China, Case No. A-570-803, dated September 18, 1992 (Forrest Tool's Request).)

Forrest Tool argues that the Max Multi Purpose Ax is not covered by the scope of the orders because it is a "whole tool unto itself, that the parts are dependent upon each other, and it is only available as a whole." (See Forrest Tool's letter of Rebuttal Comments to the Department, dated December 11, 1992, at 1.)

3. Analysis:

We have evaluated Forrest Tool's request in accordance with §353.29(i)(1) of the Department's regulations. In analyzing this scope request, the Department took into account the descriptions of the merchandise contained in the petition; the initial investigation; and the determinations of the Department and the ITC.

Because the Department found that these descriptions were not dispositive, we used additional criteria as specified in section 353.29(i)(2) of the Department's regulations. These criteria are the following: the physical characteristics of the merchandise; the expectations of the ultimate purchasers; the ultimate use of the merchandise; and the channels of trade.

Documents from the underlying investigation deemed relevant by the Department to the scope of the outstanding orders were made part of the record of this determination. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the record for this determination.

Physical Characteristics of the Merchandise:

The Max is primarily an ax with five additional tools that attach to the ax head. The ax (with wood handle) along with three of the tool attachments, the pick attachment, broad pick attachment, and mattock attachment, are specifically included within the scope of the orders. The remaining tool attachments, the reversible rake/hoe attachment and the shovel attachment, are not covered by the scope of the orders.¹

Forrest Tool asserts that the Max is not a HFHT "in the traditional sense," because the pick and mattock attachments are "lighter and smaller than similarly named, stand alone heavy forged hand tools." (See Forrest Tool's Letter of Rebuttal Comments to the Department, dated December 11, 1992, at 3.) Forrest Tool also claims that the Max is not a "direct substitute" for domestic like products, because "a Max is a Max is a Max, [and] is not a sledge hammer, nor a pick, mattock, broad pick, or ax. It is a Max." Id. at 4. Forrest Tool also states that the Max is "only sold as a complete package...[and] never sold as individual tools...[and t]he parts are dependent upon each other." Id. at 1.

Woodings-Verona, on the other hand, asserts that the Max is not a single product but a collection of "individual tool heads... packaged with a complete ax." (See Woodings-Verona's Letter of Additional Comments to the Department, dated April 5, 1993, at 1-2.) According to Woodings-Verona, if the Department nonetheless determines that the Max "as a whole" is within one class or kind of merchandise subject to the antidumping order, picks and mattocks would be the appropriate category, since its essential character is

¹ The Max's other accessories, which are not within the scope of the orders, include: a safety locking pin, a safety hitch pin, a thumb screw and bar tightener, a leather ax stealth and a canvas carrying bag. (See Letter from Department of Treasury: U.S. Customs Service to Forrest Tool dated June 23, 1992, at 1-2 and Forrest Tool's Request at 1-2 and Attachment.)

imparted by the mattock, the pick attachments, rake and hoe, which are classified under the identical tariff classification." Woodings Verona agrees with the United States Customs Service's tariff classification of the Max under the U.S. Harmonized Tariff Schedule (HTS) subheading 8201.30.00, which provides for mattocks, picks, hoes and rakes, and parts thereof." ² If, however, the Department "decide[s] to disregard" the Customs classification of the Max, Woodings-Verona argues that the Max should be classified as an ax, because "[t]he ax is the single complete tool in the set and does more to establish the product's identity than any other element except the pick and mattock heads." (See Woodings-Verona's Letter of Additional Comments to the Department, dated April 5, 1993, at 3.)

It is clear from Forrest Tool's brochure for the Max that the Max is primarily an ax with components added to it. Notwithstanding Forrest Tool's assertion that the Max is "only sold as a complete package...[and] never sold as individual tools..[and t]he parts are dependent upon each other" (see Forrest Tool's Letter of Rebuttal Comments to the Department, dated December 11, 1992, at 1), it is the ax head that is a permanent part of the Max no matter what the function that the Max is being used for, and no matter what other part is added to it. When the parts (the rake/hoe, pick, broad pick, mattock, or shovel) are attached, the ax head, although sheathed, stays on the Max and is never removed. Thus, regardless of which component is attached, the Max can still function as an ax. Conversely, the Max cannot perform simultaneously more than one of the non-ax functions.

Expectations of the Ultimate Purchasers:

The parties did not comment on this criterion. Because the Max is primarily an ax with several HFHT tool attachments, the Department finds that the similarities in physical characteristics between the Max and the subject merchandise do not result in different expectations of the ultimate purchasers.

Ultimate Use of the Merchandise:

Based upon the information on the record, it is apparent that the Max has many possible uses, such as planting seedlings, light

² Woodings-Verona relies on the classification ruling of the United States Customs Service of June 23, 1992. (See Letter from Department of Treasury: U.S. Customs Service to Forrest Tool dated June 23, 1992, at 1-2.) However, Customs classification rulings are not dispositive in any Department inquiry regarding whether merchandise falls within the scope of an antidumping order.

gardening, digging small holes, unearthing rocks, breaking up cement, fighting forest fires, and removing small limbs from trees. (See Forrest Tool's request, Attachment.) Woodings-Verona argues that "[t]he Max set is clearly not a rake or a hoe. Only one of the six heads serves in this function while three heads function as picks and mattocks, used for breaking rocks or stony soil." (See Woodings-Verona's Letter of Additional Comments to the Department, dated April 5, 1993, at 2.) Woodings-Verona does not provide any further comments regarding the ultimate use of the merchandise.

We find that the ultimate use of the Max is to perform essentially the same functions as those performed by merchandise covered by the orders, *i.e.*, axes/adzes, picks, and mattocks. Axes and adzes, for example, as "hewing tools," are intended primarily for chopping wood and for digging and prying. Picks and mattocks, as "digging tools," are generally used for digging in hard and relatively soft soil, respectively. (See Heavy Forged Hand Tools from the People's Republic of China, Inv. No. 731-TA-457, USITC Publication 2357, February 1991, at A-3-A-4.) Accordingly, we find that the ultimate use of the Max is not different from that of the subject merchandise.

Channels of Trade:

Neither Forrest Tool or Woodings-Verona provide any comments regarding the manner in which the Max is advertised and displayed. In its brochure, however, Forrest Tool advertises the Max as a "Multi Purpose Ax." (See Forrest Tool's Request, Attachment.) Such a description of the Max by its producer indicates that the Max is advertised and displayed as an ax, notwithstanding its being labeled otherwise in Forrest Tool's narrative descriptions.³

According to Forrest Tool, the Max is sold predominantly to U.S. government agencies, such as the Departments of Agriculture and the Interior, and the Army Corps of Engineers. (See Forrest Tool's Request, Attachment.) Yet in the same submission, Forrest Tool states that the Max is intended for "campers, foresters, utility companies, [those engaged in] light search and rescue, sportsmen, contractors, fire fighters, timber fallers, boy scouts, homeowners, and [those engaged in] land/air/sea emergency survival." Thus, the Max's channels of trade are not distinguishable from those of other HFHTs.

³ Elsewhere, Forrest Tool describes the Max as a "Multipurpose emergency tool," a Multipurpose Tool," and the "perfect emergency tool" (as discussed in the above sections) (See Forrest Tool's Letter of Rebuttal Comments, at 1).

4. CONCLUSION:

Based on the above analysis, we conclude that Forrest Tool's Multi Purpose Ax falls within the scope of the antidumping duty orders on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China, and in particular, the order covering axes, adzes, and similar hewing tools.

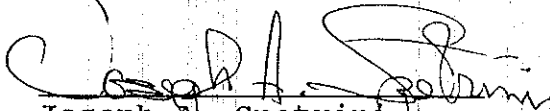
5. RECOMMENDATION:

That the Department finds the Max within the scope of the antidumping order on axes, adzes, and similar hewing tools from the PRC.

Agree Disagree

If you agree, we recommend sending the attached cover letter to all interested parties.

Agree Disagree



Joseph A. Spetrini
Deputy Assistant Secretary
for Compliance


Date

Attachment

